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NEW DELHI, SATURDAY, MAY 8, 1993/VAISAKHA 18, 1915

इस भाग में भिन्न प्रकार संख्या वो जाती है जिससे कि यह अस्तग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य के प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिकारियों
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

(भारत निर्वाचन आयोग)

नई दिल्ली 23, अप्रैल, 1993

बा. अ. 83.—लोक प्रतिनिधित्व ग्रविनियम, 1950
(1950 का 43) की धारा 13 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग, अण्डमान व निकोबार द्वीपसमूह संघ राज्य-भेदों के परामर्श में श्रीमती किरण ढोंगेर अर्थ पृष्ठ ग्राम्यकूल एवं संविधि (योजना) को अण्डमान व निकोबार द्वीप समूह संघ राज्य-भेदों के निए मुख्य निर्वाचन अधिकारी के रूप में, उनके कार्यभार ग्रहण करने की तारीख से और अगले शादीयों तक इसके द्वारा नामिन करता है। उन्हें निर्वाचन आयोग के अधीन निवाचियों में सम्बन्धित संघ राज्य-भेद गचिवालग में निर्वाचियों में सम्बन्धित किभाग में संघ राज्य-भेदों के सचिव के रूप में भी नामिन किया जायेगा।

2. आयोग ने यह नोट किया है कि श्रीमती किरण ढोंगेरा के पास निम्ननिखित चौदह विभागों का अतिरिक्त कार्यभार है:—

1. योजना
2. कृषि
3. पशुपालन
4. नगर पालिका बोर्ड महिल स्थानीय स्वयंसेवन
5. 20 सूची कार्यक्रम
6. सहकारिता
7. ग्रामीण विकास
8. सामुदायिक विकास
9. पंचायत
10. पासपोर्ट
11. उद्योग
12. विषेष सचिव (गृह)
13. माधारण-सोनिटरिंग
14. शिक्षा

आयोग अण्डमान निकोबार द्वीपसमूह संघराज्य-क्षेत्र में एक पूर्ण-कालिक मुख्य निर्वाचन अधिकारी पर बल नहीं दे रहा है क्योंकि संघ राज्य-क्षेत्र में केवल एक संसदीय निर्वाचन क्षेत्र है जैसे ही साधारण निर्वाचन संशिकट होगे, श्रीमती किरन धींगरा को सभी और प्रत्येक अतिरिक्त कार्यभार से वंचित कर दिया जायेगा और आयोग को अनुपालन रिपोर्ट भेजी जायेगी।

3. मुख्य निर्वाचन अधिकारी अण्डमान व निकोबार दीप समूह के रूप में कार्य करते हुए श्रीमती किरन धींगरा को किसी भी समय पर, उपरोक्त पैराग्राफ 2 में वर्णित कार्यभारों के अतिरिक्त अण्डमान व निकोबार द्वीपसमूह के प्रशासन के अधीन, आयोग के पूर्व लिखित अनुमोदन के बिना किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण करने के लिए नहीं कहा जायेगा।

4. यदि साधारण निर्वाचन के संशिकट होते ही श्रीमती किरन धींगरा को उनके सभी अतिरिक्त कार्यभारों से वंचित नहीं किया जाता है या उपरोक्त पैराग्राफ 2 में वर्णित कार्यभार के अतिरिक्त आयोग के पूर्वलिखित अनुमोदन के बिना किसी भी प्रकार का कोई अतिरिक्त कार्यभार सौंपा या ग्रहण करने का आदेश दिया जाता है तो श्रीमती किरन धींगरा को, इस आदेश के अनुसार ऐसा अतिरिक्त कार्यभार ग्रहण करने को तारीख में मुख्य निर्वाचन अधिकारी, अण्डमान व निकोबार द्वीपसमूह के पदभार में अपने आप हटा दी गई समझा जायगा और किन्हीं अलग आदेशों को जारी करने की आवश्यकता नहीं होगी। उसके पश्चात् गुरु निर्वाचन अधिकारी के रूप में उनकी ड्यूटी और कार्य के तथा कथित निवाहन में उनके द्वारा दी गई सभी या कोई कार्यवाई अप्राधिकृत और नास्ति और शूल्य होगी और उनके विरुद्ध अनुशासनात्मक कार्यवाई वी जा सकेगी;

[सं. 154/प्र नि द्वी/93-1411]

आदेश से.

कें पी० जी० कुट्टी, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 23rd April, 1993

O.N. 83.—In exercise of the powers conferred by sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Union Territory of Administration of Andaman and Nicobar Islands, hereby nominates Smt. Kiran Dhingra, LAS, Commissioner-cum-Secretary (Planning) to the Union Territory Administration of Andaman and Nicobar Islands, as the Chief Electoral Officer for the Union Territory of Andaman and Nicobar Islands with effect from the date she takes over charge and until further orders. She will also be designated as Secretary to Union Territory in the department dealing with elections in the Union Territory Secretariat dealing with elections under the Election Commission.

2. The Commission has noted that Smt. Kiran Dhingra has additional charge of the following fourteen departments:

1. Planning.
2. Agriculture.
3. Animal Husbandry.

4. Local Self Government including Municipal Board.
5. 20-Point Programme.
6. Cooperation.
7. Rural Development.
8. Community Development.
9. Panchayat.
10. Passport.
11. Industries.
12. Special Secretary (Home).
13. General Monitoring.
14. Education.

The Commission is not insisting on a full-time Chief Electoral Officer in the Union Territory of Andaman and Nicobar Islands as the Union Territory has only one Parliamentary Constituency. As soon as a General Election becomes imminent, Smt. Kiran Dhingra shall be divested of all and every additional charges and a compliance report sent to the Commission.

3. Smt. Kiran Dhingra while functioning as Chief Electoral Officer, Andaman and Nicobar Islands, shall not be asked to take over without the prior written approval of the Commission, any additional charge whatsoever under the Administration of Andaman and Nicobar Islands even and above the charges mentioned in paragraph 2 above, at any time.

4. If Smt. Kiran Dhingra is not divested of all her additional charges as soon as a General Election becomes imminent or is entrusted with or ordered to hold any additional charge of any kind whatsoever over and above the charge mentioned in paragraph 2 above, without the prior written approval of the Commission, Smt. Kiran Dhingra will stand removed from the office of the chief Electoral Officer, Andaman and Nicobar Islands from the date of assumption of as such additional charge in terms of this very Order and no other Order will, or need to, be issued. All and any action taken by her thereafter in the discharge of her duties and functions as the Chief Electoral Officer shall be unauthorised, without jurisdiction, non-existent and void and she shall render herself liable to disciplinary action.

[No. 154/A&NT/93/1411]

By Order,
K. P. G. KUTTY, Secy.

नई दिल्ली 26, अप्रैल, 1993

श्र. अ. 84.—42.-सलेमपुर निर्वाचन-क्षेत्र में लोक सभा के लिए हुए साधारण निर्वाचन में निर्वाचन लड़ने वाले अभ्यर्थी श्री रामनाथ निवासी कहानी, पी० प्रादिया, जिला देवरिया को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10-के अधीन उक्त अधिनियम और तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्यायों का कोई भी लेखा दाखिल करने में असफल रहने पर भाग्य निर्वाचन आयोग ने तारीख 7-10-1992 के अपने आदेश सं. 76/उ.प्र.-स० भ./91 (3) द्वारा निर्धारित किया था ;

और उक्त श्री रामनाथ ने उन पर लगाई गई निर्धारित हटाने के लिए भारत निर्वाचन आयोग के समक्ष तारीख 20 अक्टूबर, 1992 को एक अर्जी दाखिल की जिसमें

लेखा दाखिल करने में उनकी असमर्तता के कारण दिए गए थे;

और याचिका पर विचार करने और मामले के सभी महत्वपूर्ण तथ्यों को ध्यान में रखने के पश्चात् लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 11 द्वारा प्रदत्त नियमों का प्रयोग करने हुए, निर्वाचन आयोग ने तारीख 19-4-1993 के अपने प्रादेश द्वारा उक्त अधिनियम की धारा 10-के अधीन तारीख 7 अक्टूबर, 1992 को जारी किए गए आयोग के आदेश द्वारा श्री रामनाथ पर लगाई गई निर्गता को तारीख 19-4-1993 से हटा दिया गया है।

अब, उक्त श्री रामनाथ का नाम आयोग के तारीख 7 अक्टूबर, 1992 के आदेश सं. 76/उ.प्र. प्र. लोक सं/91(3) से हटा दिया गया समझा जाएगा।

[म. 76/उ.प्र.--लो. सं. 91/14359]

आदेश से,

घनश्याम खोहर, सचिव

New Delhi, the 26th April, 1993

O.N. 84.—Whereas, Shri Ram Nath R/o Vill. Kuhano, Post Adiya, Distt. Deoria, a contesting candidate for the General Election to Lok Sabha from 42-Salempur constituency held in May-June, 1991 was disqualified by the Election Commission of India vide its Order No. 76/UP-HP/91 (3) dated 7-10-1992, under section 10A of the Representation of the People Act, 1951, for failure to lodge any account of his election expenses as required by the said Act and Rules made thereunder;

And whereas, the said Shri Ram Nath had submitted a petition dated 20th October, 1992 before the Election Commission of India for removal of disqualification imposed on him, giving reasons for his failure to lodge the account;

And Whereas, after considering the petition and taking into account all material facts of the case, the Election Commission in exercise of the powers conferred by section 11 of the Representation of the People Act, 1951 has, vide its order dated 19-4-1993 removed the disqualification of Sh. Ram Nath imposed upon him by the Commission's order dated 7-10-92, under section 10A of the said Act, with effect from 19-4-1993.

Now, therefore, the name of the said Shri Ram Nath shall be deemed to have been omitted from the Commission's Order No. 76/UP-HP/91 (3) dated 7-10-92.

(No. 76/UP-HP/91/4859)

By Order,

GHANSHYAM KHOHAR, Secy.

नई दिल्ली, 26 अप्रैल, 1993

आ. अ. 85.—निर्वाचन आयोग 23-नागपुर संसदीय निर्वाचन भेत्र से लोक सभा के लिए श्री दना जी राघोबाजी मेंदे के निर्वाचन को प्रणगत करने हुए 1991 की निर्वाचन अर्जी संस्था, 1 में बंबई उच्च न्यायालय, नागपुर न्यायालयीठ के तारीख 3 अगस्त, 1992 के निर्णय को

लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

[म. 82/महा लो. स/1/91 (नागपुर)/93]

आदेश से,
बलवन्त सिंह, सचिव

New Delhi, the 26th April, 1993

O.N. 85.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 3rd August, 1992 of the High Court of Judicature at Bombay, Bench at Nagpur in Election Petition No. 1 of 1991, calling in question the election of Shri Dattaji Raghabaji Meghe to the House of the People from 23-Nagpur Parliamentary Constituency.

[No. 82/MT-HP/1/91(NAGPUR)/93]

By Order,
BALWANT SINGH, Secy.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT NAGPUR

Election Petition No. 1 of 1991

1. Gajanan Krishnaji Bapat,
aged about 68 years,
occupation : Social Worker,
Vice President of Nagpur City
Bhartiya Janata Party,
resident of Giripeth, Nagpur ;

2. Shobharam s/o Sitaramji Pande,
aged about 52 years,
occupation : Advocate,
resident of Gorepath, Nagpur.

PETITIONERS

versus

1. Dattaji Raghabaji Meghe,
aged about 55 years,
occupation : Social Worker,
resident of House No. 125,
Ward No. 74, Khamla, Nagpur ;

2. Banwarilalji s/o Bhagwandasji
Purohit, aged about 52 years,
occupation : Social Worker,
resident of West High Court Road
Dharampeth, Nagpur ;

3. Iqbal Ahmad,
aged about 52 years,
occupation : Advocate,
resident of Jagannath Wadi,
Hinganghat, Tahsil Hinganghat,
District Wardha ;

4. Shri Rameshkumar Ramjidas,
aged adult,
occupation : Social Worker,
resident of Jejani Building,
House No. 930, in front of
Sarda Transport, Chhapru Nagar
Square, Post : Lakadganj, Nagpur .

5. Shri Mohd. Jilani Abuliyas,
aged adult,
occupation : businessman,
resident of Nalsahab Road,
Hansapuri, Nagpur ;

6. Shri Arun Shamrao Joshi,
aged about 36 years,
occupation : Social Worker,
resident of Shriram Temple,
Tilak Road, Mahal, Nagpur-2 ;

7. Shri Ashok Narayanrao Dongare,
aged about : Adult,
occupation : Politician,
resident of Nagpur ;

8. Shri Kamta Prasad Singh,
aged : adult,
occupation : not known,
resident of 174, Guruprasadnagar,
Dattawadi, Nagpur-23 ;
9. Shri Keshrao Gadekar,
aged about 60 years,
occupation : Tailoring Shop,
resident of New Shukkarwari,
Gandhigate, Mahal, Nagpur ;
10. Shri Yadaorao Tulshiramji Gajbliye
Aged : adult,
resident of Wakilpeth,
Post : Hanuman Nagar,
Ward No. 17, Nagpur ;
11. Shri Purushottam Ganpatrao Gawali
aged : adult,
occupation : not known,
resident of Ramna Marotinagat,
Behind Umred Road, Ward No. 21,
Nagpur ;
12. Shri Gurumukhdas Dhalimal Belani
aged : adult,
occupation : businessman,
resident of Sindhi Colony,
Khamla, Nagpur-25 ;
13. Pandit Govindram Ramkishan Thanvi.
aged about 45 years,
occupation : Pandit (Priest),
resident of Narsinha Temple,
Itwari, Nagpur ;
14. Shri Chindhu Ukndarao Sonbarte.
aged 40 years,
occupation : service,
resident of Boudh Vihar Galli,
near the House of Mate Police
Constable, Pandharabodi, Nagpur ;
15. Shri Janardan Bhiwaji Gajbhiye.
aged : adult,
occupation : not known,
resident of Waddhamna, Tahsil and
District Nagpur ;
16. Pro. Jogendra Kawade,
aged about 40 years,
occupation : Social Work,
resident of 234A-1,
Laxminagar, Nagpur ;
17. Dr. Kisan Hanuji Jambhulkar,
aged about 55 years,
occupation : business,
resident of New Indora,
Ward No. 56, Mata Tekdi,
Post : Bezonbagh, Nagpur ;
18. Shri Gangadharrao Ramkrishnarao
Telrande, aged 42 years,
occupation : business,
resident of in front of Vijay
Cinema, Ghat Road, Nagpur ;
19. Shri Tryambak M. Chakole,
aged about 38 years,
occupation : business,
resident of Mahal Post Office,
Rajvilas Cinema Building,
Nagpur ;
20. Shri Dinkarrao Krishnarao Kamble,
aged : adult,
occupation : not known,
resident of 1/1, Rambagh,
Medical College Square, Nagpur ;
21. Shri Dinesh Tukaram Bhange,
aged about 34 years.
occupation : Social Worker,
resident of Takiya, Dhantoli,
Nagpur ;
22. Sou. Deokabai Prabhakar Nagarkar,
aged : adult,
occupation : Household,
resident of Post Pohara,
Taluka Sakoli,
District Bhandara ;
23. Shri Prabhakar Bhiwaji Nagarkar,
aged : adult,
occupation : agriculturist,
resident of Post Pohara,
Taluka Sakoli,
District Bhandara ;
24. Shri Navnitlal Girijatilal Lad,
aged about : adult,
occupation : Business,
resident of Jetanand Pamandas
Building, Queta Colony,
Lakadganj, Nagpur ;
25. Shri Yeshwant Vishwanath Mehatkar
aged about 65 years,
occupation : Social Work,
resident of 279, Samkarnagar,
Nagpur-10 ;
26. Shri Pandurang Somayr Pise,
aged about 38 years,
occupation : Social work,
resident of Siraspatti,
Mattipura, Nagpur ;
27. Shri Prakash Parumal Potwani,
aged about adult,
occupation : business,
resident of Sindhi Colony,
Plot No. 141, Khamla,
Nagpur-25 ;
28. Shri Kashinath Chanmarrai Bakane,
aged adult,
occupation : not known,
resident of Bansinagar,
Hingna Road, Near Railway Compound,
M.I.D.C., Nagpur ;
29. Shri Bhimrao Vithalrao Kapse,
aged : adult,
occupation : not known,
resident of 16, Laxman Apartment,
Wardha Road, Near Sai Temple,
Nagpur ;
30. Shri Deochand Masram,
aged adult,
occupation : social work,
resident of Ward No. 5 Chhaoni Basti,
Mohalla, Nayabasti, Nagpur ;
31. Hinakshi Ramchandra Ayyar,
aged about 60 years,
occupation : Retd. Govt. Employee,
resident of A-2/2, 'Jinki',
Nagpur Sarkari Karmachari Gruha
Nirman Sahakari Sanstha Limited,
Nagpur ;
32. Shri Mukund Sudam Gajave,
aged about adult,
occupation : not known,
resident of Gautam Nagar,
Kamptee ;
33. Shri Ganesh Gattuji Mokashe,
aged adult,
occupation : not known,
resident of Bharat Nagar, Nagpur ;
34. Shri Mohan Karemore,
aged about adult,
occupation : not known,
resident of Itwari Railway Colony,
G.T. 12/1, Itwari Section, Nagpur ;
35. Shri Yogesh Krishnarao Kumbhalkar.
aged about 33 years
occupation : business.
resident of Ganeshpeth.
Ward No. 6, Nagpur ;

36. Shri Raman Murti,
aged about 40 years,
occupation : service.
resident of J-49,
Reserve Bank Colony,
Civil Lines, Nagpur ;
37. Shri Ravindra Prabhakar Shrialkar,
aged about 30 years,
occupation : Social Work,
resident of Narharinagar,
Rajapeth, Amravati ;
38. Smt. Ragini Prakash Ramteke,
aged about : adult,
occupation : Social Work,
resident of Gurunanak Ward No. 39,
Wardha-4 ;
39. Shri Ram Hedao,
aged about 55 years,
occupation : Social work,
resident of 24, M.L.G. Flat,
Kachipura, Ramdaspeth, Nagpur ;
40. Shri Ramdas Rajaram Diware,
aged adult,
occupation : not known,
resident of Post Godhani (Rly.),
Tahsil and District Nagpur ;
41. Shri Ramesh Mukundrao Warudkar,
aged : adult,
occupation : Not known,
resident of Lalganj, Bangaladesh,
Naik Tank, Nagpur ;
42. Shri Wasudeo Madavi,
aged adult,
occupation : Not known,
resident of Ward No. 62,
Seminatory Hill, Surendragarh, Nagpur ;
43. Shri Vijay Sachumal Chattani,
aged adult,
occupation : business,
resident of plot No. 12, Sindhi
Colony, Khamla Rd., Nagpur ;
44. Shri Vinayakrao Haribhauji Faye,
aged adult,
occupation : not known,
resident of Lohapul, Pandit Malviya
Road, Sitabuldi, Nagpur ;
45. Shri Siddhartha s/o Narayanrao Patil,
aged about 40 years,
occupation : Social Worker,
resident of Ajni Square, Ward No. 4,
Wardha Road, Nagpur ;
46. Ku. Sushila Indal Sarade,
aged : adult,
occupation : household,
resident of Shiv Mandir, Motha Indora,
Post Jaripatka, Ward No. 57, Nagpur ;
47. The Returning Officer
for Nagpur-Kamptee Parliamentary
Constituency, having its office at
Collectorate, Civil Lines, Nagpur ;
48. The Election Commissioner of India,
having its office at Nirwachan
Bhavan, New Delhi.

RESPONDENTS.

S/Shri K. H. Deshpande and V. C. Daga, Advocates for
the petitioners.

S/Shri V. R. Manohar, Advocate General and S. A.
Bobde, Advocate for respondent No. 1.

Shri V. M. Deshpande, Advocate, for respondent No. 2.
Shri D. B. Agrawal, Advocate, for respondents 18 & 40.
Shri B. T. Patil, Government Pleader, with Shri S. G.
Jagtap, Asstt. Govt. Pleader, for respondent No. 47.

CORAM : M. S. DESHPANDE, J.

Dated : 23rd, 24th, 27th, 28th, 29th, 30th & 31st July and
3rd August, 1992

ORAL JUDGMENT.—By this petition, the petitioners seek a declaration that the election of the respondent No. 1—Shri Dattaji Raghabaji Meghe, to the Tenth Lok Sabha from 23 Nagpur Parliamentary Constituency, is void; a declaration that the respondent No. 2—Shri Banwarlal Prohit is duly elected from that Constituency; and that the respondent No. 1, having committed corrupt practices, has incurred disqualification under the provisions of the Representation of the People Act and the Rules framed thereunder.

2. The respondent No. 1 had filed an application (Exhibit 16) under section 86 read with section 81(3) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') and Order VII Rule 1 of the Code of Civil Procedure for dismissal of the election petition, as well as application (Exhibit 17) under Order VI Rules 17 of the Code of Civil Procedure for striking out certain pleadings. The application Exhibit 16 was dismissed, but the application Exhibit 17 was partly allowed and the petitioners were directed to strike out grounds 1.1 to 1.8 and 2.25 to 2.28 of the election petition, while the other grounds were allowed to be retained by the order passed on 29th October, 1991.

3. The names of the petitioner Nos. 1 and 2 as voters are included in the Voters' List for 23 Nagpur Parliamentary Constituency at serial Nos. 165 and 374. The last date for filing of nomination papers was 24th April, 1991; 27th April, 1991 was the date of scrutiny; the last date for withdrawal being 29th April, 1991. The date of poll, as originally fixed, was 23rd May, 1991 and counting was to take place in the Collector's Office at Civil Lines, Nagpur, on 27th May, 1991. The respondent Nos. 1 to 46 were amongst those who had filed their nomination papers and remained in the field after the scrutiny and the withdrawal by others of the nomination papers. As a sequel to the death of Shri Rajiv Gandhi, former Prime Minister, the date of poll was postponed by the respondent No. 48, the Chief Election Commissioner of India, to 12th June, 1991, and the counting was to be done on 16th June, 1991, from 8.00 a.m. in Shed Nos. 1 and 2 of Fruit Market situated at Nagpur Agricultural Producers Market Committee, Kalampa Market Yard. The respondent No. 1 was declared elected as having polled 2,74,448 votes as against 1,99,728 votes polled by the respondent No. 2 and 81,318 votes polled by the respondent No. 3, by a margin of 74,720 votes over the votes secured by the respondent No. 2.

4. The petitioners contend that the election of respondent No. 1 was illegal, as the election programme had already been announced and ballot papers had reached respective polling stations for the election scheduled to be held on 23rd May, 1991, and the Chief Election Commissioner of India had no authority to postpone poll in the circumstances. The nomination of the respondent No. 3—Iqbal Ahmad was improperly accepted and it materially affected the result of the election, so far as the respondent No. 1 was concerned. Further, while addressing of a large number of weavers in the office of the Maharashtra State Handloom Corporation on 17th May, 1991, the respondent No. 1 declared that the labour charges for handloom weavers would be increased by 0.35 Paise per sq. metre from June, 1991, and this announcement was deliberately made to induce the electors to vote for respondent No. 1, in contravention of the Model Code of Conduct framed by the Election Commission. That act amounted to an offer or promise by the respondent No. 1 of gratification to 1,50,000 weavers to vote for respondent No. 1 and amounted to practising undue influence and he is, therefore, guilty of committing corrupt practices within the meaning of sections 123(1)(A)(b) and 123(2) of the Act and complaints were made to the authorities apprising them of the position.

5. The next contention is that the respondent No. 1, in contravention of the provisions of section 77 of the Act and rule 90 of the Conduct of Election Rules, which specifies Rs. 1,50,000/- as the maximum limit of the election expenses in Parliamentary Constituency, showed in the account lodged on 12th July, 1991 with the District Election

Officer only an expenditure of Rs. 72,421.85, though a larger amount was spent, and had not kept correct account of all expenditure incurred by him. It was further urged that though the expenses were shown to have been incurred by the political party and other associations, persons or individuals, that expenditure, in fact, was incurred and authorised by the respondent No. 1 himself and by his election agent. The respondent No. 1 had placed his own funds in power and possession of all such organisations, individuals and the political party in order to escape from the mischief of sections 77, 78 and 123(6) of the Act, the material expenses being:—

- (i) Expenditure of Rs. 31,500.00 for hiring the premises of Sri Devi Sharda Mangal Karyalaya, Nagpur, for the election office of the respondent No. 1, at the rate of Rs. 1,500 per day from 3rd May, 1991 to 23rd May, 1991, but the expenditure shown was only Rs. 10,500;
- (ii) The total expenditure for xeroxing was Rs. 10,000, that being the amount paid to Vishwa Bharti Typing Institute, while expenditure of only Rs. 4,650 was shown;
- (iii) Hire charges for auto rickshaws, hired from M/s. Prince Travels, Ramdaspath, Nagpur, were Rs. 18,040, though only Rs. 11,000 were shown; and the expenditure on hiring taxis was not less than Rs. 12,800, though a smaller amount had been shown;
- (iv) The expenditure on diesel purchased from Pramod Auto Station—Rs. 4,672.50, and petrol purchased from Raj Automobiles—Rs. 17,900, was suppressed;
- (v) The expenditure would have been at least Rs. 2,25,000 on distributing the voter-cards to 12,40,382 voters, but that was suppressed by the respondent No. 1, by showing that they had been published by Nagpur City District Congress Committee;
- (vi) 3,25,000 posters of three different sizes, which were freely used during the election period, costing Rs. 3,40,250.00, were shown to have been issued in the name of the President, Nagpur City District Congress Committee, though the entire expenditure of printing and affixing the posters was authorised and was made by the respondent No. 1;
- (vii) Expenditure of Rs. 2,83,000 on more than 500 posters printed and exhibited at several places was not shown, though it was incurred by the respondent No. 1;
- (viii) Wall-painting at various places was carried out at the cost of Rs. 88,500/- by the respondent No. 1, but that expenditure was not disclosed;
- (ix) The expenditure on Inland letters each costing 0.75 Paise with postage 0.25 paise sent to 12,40,830 voters amounting to Rs. 12,40,830, though incurred by the respondent No. 1, was not shown in the return of expenditure;
- (x) An amount of Rs. 6,27,185/- for publishing advertisements in local newspapers for promoting the respondent No. 1's candidature between 25-4-1991 and 16-6-1991, had not been shown in the return of expenditure.

6. With regard to the last item, it was urged that the advertisements appearing in Lokmat and Lokmat Samachar cost Rs. 1,69,530/- and it was incurred by the respondent No. 1 personally. The advertisements published during that period in Nava Bharat cost Rs. 68,950/-; those in Nagpur Times and Nagpur Patrika Rs. 2,20,350/-; in Tarun Bharat-Rs. 41,305/-; in Yugadharma-Rs. 14,880/-; in Janvad-Rs. 32,340/-; in Hita-vada-Rs. 22,080/-; and in Dainik Rashtradoot cost Rs. 57,750/. The advertisements released through Yugadharma Consultants and Commercial Services ('YCCS' for short), one of the agencies employed by respondent No. 1, cost respondent No. 1 Rs. 1,40,040/-, though they were issued in the name of Nagpur City District Congress Committee. The total expenditure incurred by the respondent No. 1 through YCCS amounted to Rs. 2,74,224/-. Advertisements issued through other agencies—Orange City Advertising, Nagpur, and Prasad Publicity,

Nagpur, cost the respondent No. 1 at least Rs. 40,000/- and Rs. 23,520/- respectively. Sudhakar Deshmukh, who was the election agent of the respondent No. 1 authorised and incurred on 14-6-1991 an expenditure to the tune of Rs. 30,000/-, in addition to that already stated, and since none of these items were shown in the return of expenditure by the respondent No. 1, he was guilty of a corrupt practice under section 123(6) of the Act.

7. Another ground raised was that spurious ballot papers bearing marking on the symbol of respondent No. 1 were found at the time of counting, they being of off-white colour bordering on grey, their size being smaller and thinner than the genuine ballot papers, and this was discussed in the meeting of the workers of Bhartiya Janta Party ('BJP' for short) held on 19th June, 1991 in the BJP Office. When this position was pointed out by the petitioner No. 1 to Shri Bhiwapurkar, Assistant Returning Officer, and Counting Supervisor Jadhav, no action was taken. A complaint in writing to that effect was handed over to Bhiwapurkar, Assistant Returning Officer, but he refused to pass any order on it. The use of spurious ballot papers was made possible by a gap of four days between the date of poll and the date of counting. The discrepancy between the number of ballot papers used, as published in the press-note issued on 30th June, 1991, and the ballot papers found at the time of counting, showed that there was a difference of 9673 in the figures of the total votes polled. No steps had been taken to ask the polling agents at the polling stations to affix their seals to the ballot-boxes, and statutory and non-statutory covers forwarded by the Presiding Officers to the Returning Officer. It was urged that the petitioners are, therefore, entitled to a direction for inspection of the ballot-papers.

8. With regard to the nomination paper filed by the respondent No. 3, it was urged that it was mentioned that he had been set up by the Republican Party of India (Khobragade)-(RPI(K) for short) and gave his option for the election symbols 'Railway Engine', 'Two Leaves' and 'Rising Sun', and he was given the symbol 'Railway Engine'. The respondent No. 3 misrepresented that he was set up by RPI(K) and was supported by National Front, Communist Party of India, Communist Party of India (Marxist), Janta Dal, etc. In fact, the Election Commission of India by its wireless message dated 26th April, 1991, addressed to the Returning Officer, classified the position that he was not the official candidate of RPI(K), because he could not have been appointed as the official candidate by Ashok Gadghe as was done, but only by Advocate T. S. Tirpude. Since the declaration given by the respondent No. 3 was false and there was non-compliance with the provisions of section 43 of the Act, his nomination paper was liable to be rejected under section 36(2) of the Act. The power to appoint the official candidate of RPI(K) conferred on Ashok Gadghe had been withdrawn, and the only person competent to nominate the official candidate for RPI(K) was Advocate T. S. Tirpude. A considerable member of the 81318 votes polled by the respondent No. 3 would have gone to the respondent No. 2, Banwarilal Purohit, and by the improper acceptance of the nomination of the respondent No. 3 Iqbal Ahmad, the result of the election, insofar as the respondent No. 1 is concerned, has been materially affected. The petitioners, therefore, filed this petition for the aforementioned reliefs.

9. The respondent No. 1, by his written statement (Ex. 15A), while denying the aforesaid contentions, urged that this Constituency had, on no previous occasion, returned a candidate fielded by the BJP, and since the respondent No. 2 had defected to the BJP from the Congress (I), he could not have expected to win. It was denied that the extension of time for completion of the election by the Election Commission of India was without authority of law. With regard to the respondent No. 3-Iqbal Ahmad's nomination, it was contended that he was validly appointed as the candidate of the RPI(K) and the acceptance of his nomination had not materially affected the result of the election. With regard to the incident of 17th May, 1991, it was urged that a deputation comprising of 10 to 15 persons belonging to Halba Bunkar Sangharsh Samiti met the Managing Director of Maharashtra Handloom Corporation, Smt. Vandana Khullar and the respondent No. 1 attended that meeting, but the respondent No. 2 did not, though requested. The respondent No. 1 declined to comment on the non-payment of festival advance for the current year as he was not the

Minister of Textiles and the Awade Committee Report on the subject was pending consideration of the Government. The news item, which appeared in several newspapers, was contradicted by the respondent No. 1. Without prejudice it was submitted that an announcement of increase in the labour charges or payment of festival advance and bonus to weavers of Handloom Corporation could have been made since the demand had been pending for a long time, and such an announcement would not contravene section 123 of the Act, that being a matter of public policy of the State.

10. While controverting the allegations with regard to the excess expenditure, it was urged that the ground-floor of the premises of Devi Sharda Mangal Karyalaya was made available at the rate of Rs. 500 per day only for 21 days, and only an amount of Rs. 11,500 was paid. No expenses in excess of those which have been shown for xeroxing of documents were incurred, nor were any additional expenses, more than shown in the return, were incurred on hiring auto-rickshaws, taxes, petrol, diesel and the like. The allegation in this respect was vague, based on speculation and without substance. The voter-cards were not printed by the respondent No. 1, but by Nagpur District Congress Committee which had printed about four lakh voter-cards at its own cost. While denying that the posters were printed by the respondent No. 1 at his cost, it was contended that he was being supported by a National Party, i.e., Congress (I) which had organisations at the Central, State, District, Ward and Village level, and they supplied the posters to the candidates and this was the practice followed by all political parties, including the BJP. None of the cut-outs were got prepared by the respondent No. 1. No payments were made for these cut-outs either by the respondent No. 1 or his election agent. The cut-outs by Rajiv Gandhi, Indira Gandhi and Sharad Pawar had been prepared during the 9th Lok Sabha Elections in November, 1989 by sympathisers and friends of respondents No. 2 who was then the candidate sponsored by Congress (I), and they were used by the party. After demise of Rajiv Gandhi, sympathisers of Rajiv Gandhi had put up his cut-outs as a tribute to him. The expenditure on those cut-outs was neither incurred or authorised by the respondent No. 1. Since the expenses on wall-paintings had not been incurred by the respondent No. 1 individually, there was no need to include those expenses in the return of his expenditure. The wall-painting had been done by the political party to which the respondent No. 1 belonged, and his supporters and voluntary agencies which sympathised with him.

11. With regard to the Inland letters, it was denied that those letters were signed and sent by the respondent No. 1. The letters were sent at the expense and at the instance of Sarva Dharma Samabhav Samajik Sanghatna, as mentioned in the letters, a politically motivated organisation which believes in secularism. That organisation had got about 2000 letters printed, without the approval and consent of the respondent No. 1.

12. With regard to the details of the advertisements in the newspapers, it was urged that none of these advertisements were given by the respondent No. 1 or by his election agent, and they did not bear the expenses of those advertisements. Those advertisements, posters, banners, cut-outs, voter-cards and other publicity and campaign material was given to the candidate by the political party and its other wings, and the source of the expenditure involved was not the respondent No. 1 and he had not placed any funds in the hands of any one as his agent for incurring the expenditure.

15. The issues, which arise for decision are stated below with my findings:
ISSUES

- (1) Do the petitioners prove that they were electors in the election held for the Tenth Lok Sabha from 23, Nagpur Parliamentary Constituency?
- (2)(a) Do the petitioners prove that a meeting was held in the office of the Maharashtra State Handloom Corporation on 17-5-1991 during the Tenth Lok Sabha Election from 23, Nagpur Parliamentary Constituency?
- (b) Do the petitioners further prove that the said meeting was addressed by the respondent No. 1?

13. It was further urged that there were no differences in the colour, texture, size, printing and stamping of the ballot papers and no objection was raised before any of the authorities, and the requisite details regarding these ballot-papers and the numbers were not given. The petitioners' attempt is to have a roving enquiry made to fish out material which is not permissible in law, and no case for inspection of the ballot papers has been made out. It was denied that Professor Godghate had no authority to nominate Iqbal Ahmad as a candidate of RPI(K), and since it was not a recognised political party in the State of Maharashtra, the symbol 'Engine' was a free symbol and the respondent No. 3 was entitled to choose it. It is denied that any of the valid votes polled by the respondent No. 3 would have gone to the respondent No. 2, Banwarilal Purohit, and that the election is liable to be set aside on that count.

14. The respondent No. 2, who filed the written-statement Exhibit-12 is not at issue with the petitioners.

The respondent Nos. 18 and 40, by the written statement Exhibit-13 raised the same contentions as the respondent No. 1.

The respondent No. 47, Returning Officer, by his written-statement Exhibit 15 also denied all the adverse allegations and contended that by the letter dated 30-5-1991, all the candidates were informed that the sealed ballot boxes will be kept in safe custody in Room Nos. 23, 24, 25 and 29 in the Agricultural Produce Market Committee at Kalmuna where counting was to be held on 16th June, 1991, and were also asked to deploy their men as a security measure, if they so desired, but none deployed any guards. The premises were guarded round the clock and a log-book was maintained for each room and was handed over to the officer in-charge of the armed guard. All the strong rooms were properly sealed and no objections were raised about the condition of the seals on the boxes and the boxes with seals intact were opened at the time of counting. No complaint had been received from any quarters that the polling agents of the candidates were not allowed to subscribe their signature to the paper seals, ballot boxes and the covers, nor were there any differences as alleged in the ballot papers which were taken out for counting. The respondent No. 3 had produced an authorisation that he was sponsored by RPI(K) before the Returning Officer, before 3.00 p.m., on 29-4-1991, and no objection was raised in this respect. The free symbol 'Railway Engine' was allotted to him as per the preference given by him and that symbol was not claimed by any other candidate. The wireless message dated 26-4-1991 of the Election Commission was received by the Chief Electoral Officer, Romay, and he reproduced it in his wireless message dated 27-4-1991, but it was not shown to the respondent No. 47 upto 3.00 p.m., on 29-4-1991, or until the allotment of symbol. Since Republican Party is an unrecognised registered party in the State of Maharashtra for which no exclusive symbol is reserved, nothing turns upon the contentions raised by the petitioners. It was too late when the communication from the Election Commission was brought to the notice of the Returning Officer, and the petitioners are not entitled to any of the reliefs claimed.

The other respondents remained absent and did not participate at the trial.

FINDINGS

Yes.

Yes.

No.

ISSUES

- (c) Do the petitioners prove that in the said meeting, respondent No. 1 had declared that labour charges for handloom weavers would be increased by 0.35 Paise per sq. metre from June, 1991?
- (d) Do the petitioners prove that the said declaration of increase in the Labour charges was made by respondent No. 1 to hold out promise of gratification for inducing the weavers numbering 1,50,000 to vote for the respondent No. 1?
- (e) Do the petitioners prove that the said declaration made by the respondent No. 1 amounts to commission of corrupt practice within the meaning of section 123(1)(A) i.e., bribery?
- (f) Do the petitioners further prove that the said declaration made by respondent No. 1 also amounts to undue influence constituting commission of corrupt practice under section 123(2) and further amounts to direct or indirect interference or attempt to interfere with the free exercise of electoral rights of the handloom weavers who were electors in the said election?
- (3) Do the petitioners' prove that the respondent No. 1 has not maintained correct and proper accounts as is required to be maintained under section 77 and has incurred expenses in excess of the limit prescribed thereunder and thereby committed corrupt practice under section 123(6) of the Act?
- (4) Do the petitioners prove that the respondent No. 1 incurred more expenditure than what is disclosed by him in the return of expenditure annexed as Annexure 7 to the petition, on the following items as alleged in paras 2.4 to 2.10 of the petition, on account of the—
- (i) payments made to Shri Devi Sharda Mangal Karyalaya, Nagpur, by way of office rent?
 - (ii) payments made to M/s. Vishwa Bharti Typing Institute, Nagpur.
 - (iii) payments made to M/s. Prince Travels, Nagpur, for hiring auto-rickshaws and taxis.
 - (iv) payments made to M/s. Pramod Automobiles, Nagpur.
 - (v) payments made to M/s. Raj Automobiles, Nagpur.
- (5)(a) Do the petitioners prove that the respondent No. 1 has authorised and/or incurred expenditure on the undermentioned items which has not been disclosed in the return of expenditure annexed as Annexure-7 to the petition as alleged in paras mentioned in the petition described against each item hereunder:
- (5)(b) Do the petitioners prove that printing cards at Annexure 9 indicate that the same have been published by Nagpur City District Congress Committee, Nagpur, but the expenditure incurred on printing and distribution of about 15 lacs voter-cards has been made by respondent 1 to the extent of Rs. 2,25,000. Do the petitioners further prove that the respondent-1 has got printed those cards at Shakti Offset Works, Nagpur and the said firm received a total amount of Rs. 2,25,000 from respondent-1?

FINDINGS

No.

No.

No

No.

Yes to the extent of Rs. 58,220 but not in excess of the limit prescribed.

Corrupt practice not proved.

No.

No.

No.

No.

Yes Rs. 17,900.

No.

ISSUES

FINDINGS

- (ii) Do the petitioners prove that respondent-1 got printed 3,25,000 posters of different sizes though those posters show that they were issued by President, Nagpur District Congress Committee and the entire expenditure of these posters to the tune of Rs. 3,40,250 was made by respdt. No. 1 ?
No
- (iii) Do the petitioners prove that the respondent No. 1 published his candidature by large size cutouts at places mentioned in Annexure 11 alleged to be prepared by persons whose names are given in Annexure 10 ? Do the petitioners further prove that cost of these cutouts comes out to Rs. 2,83,000 as given in Annexure-11 and was incurred by respondent No. 1 by paying the same to persons mentioned in Annexure-10 ?
No
- (iv) Do the petitioners prove that the respondent No. 1 advertised his candidature by wall paintings at different locations at Annexure-12 costing about Rs. 88,500 ? Do the petitioners further prove that these wall-painting work was got executed by respondent No. 1 through painters and incurred expenditure of it by payment of charges of painters ?
No
- (v) Do the petitioners prove that about 12,40,830 letters such as those at Annexures 13 & 14 were got prepared by the respondent No. 1 and were sent to voters and almost all the voters received these letters ? Do the petitioners further prove that although on this letter, it appears that the same is being sent at the instance of Sarva Dharma Samabhav Samajik Sanghatana, the expenditure required in fact was incurred by respondent No. 1 to the extent of Rs. 12,40,830 ?
No
- (vi) Do the petitioners prove that advertisement in newspapers at Annexure A at serial Nos. A2 A5, A7 A8 A10, A14 to A19, A22 to A27, A28(b), A30(a) (first part), A30(b) (second part); Annexure-B at serial Nos. B4 to B9 B11 to B14 B17 and B18; Annexure-C, at serial Nos. C1, C2 C4, C5, C10, C12 C14 to C18, C23 & C24; Annexure-D at serial Nos. D1, D2, D3, D5, D7, D8, D11, D13 and D15; Annexure-E at serial Nos. F1, F2, F9 and F10; Annexure-F at serial Nos. F1, F2, F3, F6 F10, F14 and F16; Annexure-G, at serial Nos. G1, G2 and G3; Annexure-H at serial Nos. H1 to H4, H7 H8, H11 and H17, were published by respondent No. 1 himself in connection with the election and he himself incurred the expenditure ?
Yes, but only in respect of ads. in newspapers at Sr. Nos. A14(b); A15(a) & (b); A17(a) & (b); A19(a) & (b); and A22(a) & (b) of Annexure-A; and no other.
- (vii) Do the petitioners prove that the advertisements appearing in newspapers at—
Annexure-A: at S. Nos. A6, A9, A11 to A13, A20, A21, A27(a), A28, A30(b) (first part) and A31(b);
Annexure-B : at S. Nos. B1, B2, B3, B10, B15, B16 B19;
Annexure-C : at S. Nos. C3, C6 to C9, C11, C13, C19 to C22;
Annexure-D : at S. Nos. D4, D6, D9, D10, D12 and D14;
Annexure-E : at S. Nos. E3 to E8;
Annexure-F : at S. Nos. F1, F5, F7 to F9, F11 to F13 & F15;
Annexure-G : at S. Nos. G4 to G8; are published in connection with election by the respondent No. 1 and the expenditure of which is incurred by the

ISSUES

FINDINGS

respondent No. 1 himself though in the said advertisement the names of publishers are shown as persons other than the respondent No. 1 as given in Annexures.

(6)(a) Do the petitioners prove that the respondent No. 1 had employed M/s. Yugdharma Consultant and Commercial Services, Nagpur to publicise his candidature and incurred expenditure as per the details shown in Annexures 17 & 18 and alleged in para 2.13 of the petition?

No

(b) Do the petitioners prove that besides the above agency, the respondent No. 1 had employed two other agencies, namely, Orange City Advertising and Prasad Publicity for publishing his candidature by advertisements issued in the newspapers and thereby authorised and incurred expenditure as per details shown in Annexures 18A, 18B and 18C and alleged in paras 2.23A to 2.23D of the petition?

As regards Orange City Advertising : No
As regards Prasad Publicity : Yes, but only in respect of the item included in issue No. 5(b)(vi) & (vii).

(c) Do the petitioners prove that election agent of respondent No. 1 incurred total expenditure to the tune of Rs. 39,500 on 14-6-1991 and 17-6-1991 for publication of advertisement in connection with the election?

No

(7) Do the petitioners prove that the respondent No. 47 did not properly scrutinise the nomination of the respondent No. 3 and he was allowed to represent himself as such, although a wireless message dated 26-4-1991 to the contrary was received by the Returning Officer prior to the acceptance of the nomination papers from the Chief Electoral Officer of the Maharashtra?

No

(8) Do the petitioners prove that by allowing the respondent No. 3 to represent himself as the official candidate of R.P.I. (K), the result of the election of the respondent No. 1 has been materially affected?

No

(9) Are the petitioners entitled to have inspection of the ballot papers on the basis of the allegations made in paras 3.1 to 3.11 of the petition and the allegations made in paras 1 to 13 of Exhibit 28?

No

(10) Do the petitioners prove that the election of the respondent No. 1 to the Tenth Lok Sabha from 23, Nagpur Parliamentary Constituency is void on account of the commission of corrupt practices under sec. 123(1A), sec. 123(2) and sec. 123(6) of the Act?

No

(11) Do the petitioners prove that the respondent No. 2 has secured majority of valid votes to entitle him to be declared as duly elected from 23, Nagpur Parliamentary Constituency to the Tenth Lok Sabha?

Does not survive.

(12) Do the petitioners prove that but for the votes obtained by respondent No. 1 by alleged corrupt practices, the respondent No. 2 would have obtained majority of valid votes to entitle him to be declared duly elected?

Does not survive.

(13) Whether respondent No. 2 can be declared as duly elected to the Tenth Lok Sabha from 23, Nagpur Parliamentary Constituency, Nagpur?

(14) What order ?

Election Petition dismissed, with no order as to costs.

16. Issue No. 1.—It is apparent from the evidence of the first petitioner Bapat, who is the Vice President of BJP Nagpur City, that his name appears at serial No. 165 and that of the second petitioner, who is a worker of the BJP, at serial No. 374, in the Voters' List of 137, West Nagpur Segment—Exhibits 66 and 67. The petitioners, being the electors in the Lok Sabha from 23 Nagpur Parliamentary Constituency, are entitled to maintain this petition, and I hold accordingly.

17. Issue No. 2.—The petitioners examined Narayan Lahari Mohadikar (P.W.27), Kamji Gehu Paunikar (P.W.28) and Digamber Raghobaji Parate (P.W.29), in support of their allegations about the meeting alleged to have been addressed by the first respondent in the office of the Maharashtra State Handloom Corporation, Nagpur, on 17th May, 1991. First respondent-Meghe, in his evidence, admitted that he attended the said office in the after-noon on 17th May 1991. First petitioner Bapat was not present at the meeting and had no personal knowledge about what happened there. It is apparent from the evidence of the other witnesses that there are about 1,50,000 weaver-voters in this Constituency. Narayan Mohadikar (P.W.27) is the President of the Bunkar Mazdoor Sanghastra Samiti, the organisation which has espoused the cause of the weavers. According to him and Ramaji Paunikar (P.W.28), about 125 to 150 weavers had collected in the office of the Handloom Corporation. According to the first respondent-Meghe, he had been told by one Mannu Datta that the candidates, who were contesting for the Lok Sabha election, had been requested to attend the meeting and the second respondent Banwarilal Prohit had also been requested to be there. Banwarilal Prohit did not attend the meeting. Narayan Mohadikar and Ramaji Paunikar both stated that there were several demands including a rise in the wages to be paid to the weavers who were employed by the Handloom Corporation, and a demand also for being given festival advance. According to Narayan Mohadikar Meghe said at that place that the wages would be raised by 0.35 Paise per metre and thereupon, about 100 to 125 persons decided to extend their support to him. He, however, admitted that Meghe did not ask for their support in return, but only said that out of 0.65 Paise per metre, there would be a rise of 0.35 Paise per metre from June onwards. The version given by Ramji Paunikar is somewhat different. According to him, Meghe came to the office of the Corporation and the member, of the deputation went with him to the office of Mrs. Khullar, Managing Director of the Corporation. Ramaji Paunikar did not go inside the office where the discussions for about 45 minutes were held, and when Meghe came out, he collected weavers and told them that from 1-6-1991, the weavers would get rise of 0.35 Paise in their wages and they all felt that he was a person who would support their cause and they should vote for him. According to him, Datta Meghe came there of his own accord, on hearing that the weavers were to take a deputation during election period. These demands had been raised about three years earlier and even the earlier rise in the wages had not been paid. He could not say if Awade Committee was appointed to look into the demands of the weavers. The version given by Datta Meghe (IRW1) is that, it was the grievance of Hindu weavers that they were not being given festival advance, though festival advance had been given to Muslim weavers on the occasion of Id. After he went to the office of the Corporation, he, Mannu Datta and two or three others went inside the office of the Managing Director, and after the others presented a typed representation to her, he told her that if a section of the society was being given festival advance, the other section should also be given that advance, and this was his request to her, and she said that she would look into it and would consider it, and there was no occasion for him to give an assurance that the wages would be increased by 0.35 Paise per metre from 1st June, 1991.

18. The first respondent, at that time, was the Minister of Civil Supplies and not the Minister of Textiles. He asserted that he did not give any assurance at that time, in spite of his being the Guardian Minister of Nagpur district. Reliance was placed on behalf of the petitioner on the cir-

cumstance that Digamber Parate (P.W.29) called a Press Conference on 28th May, 1991, in Tilak Bhawan, protesting against the announcement of the rise by the first respondent who was a co-contesting candidate for the Lok Sabha (L.C.C.) as it violated the Code of Conduct framed by the Election Commission. A news item regarding the announcement alleged to have been made by the first respondent appeared in certain newspapers. The first respondent admitted in his evidence that such newspaper reports had been published in Tarun Bharat at page-2, but he issued a contradiction which was published in Nagpur Patrika Exhibit-843, Janavadi Exhibit 844, Tarun Bharat Exhibit 845 and Yuga Dharmika Exhibit 846, on 22nd and 23rd May, 1991. His Election Agent, Sudhakar Deshmukh also informed the Returning Officer, by his communication dated 23rd May 1991, Exhibit 784, enclosing the copies of the newspapers and he himself also wrote to the Returning Officer the letter Exhibit 785 containing the contradiction. Digamber Parate (P.W.29) was not present at the meeting, but had called a Press Conference, after reading the report in Nava Bharat dated 18-5-1991, and immediately made the complaint Exhibit 92 to the Election Officer, protesting about the rise. With regard to the announcement attributed to the first respondent, the only evidence is that of Narayan Mohadikar (P.W.27) and Ramaji Paunikar (P.W.28), and considering that their account, regarding the incident, is disjointed and a timely contradiction was issued by the first respondent, no importance can be attached to their evidence.

19. The learned Counsel for the petitioners urged that in view of first respondent's admission that he was present at the meeting and that he had thrown his weight in favour of the demand, there is no reason why the account of the petitioners' witnesses should not be accepted. The only version that is being construed as admission is the first respondent's statement that he had asked Mrs. Khullar not to treat the Hindu weavers differently in respect of the demand for festival advance. No admission can be attributed to him about putting his weight behind the demand for the rise in the wages. In view of this evidence, though I find that there was a meeting in the office of the Handloom Corporation on 17th May, 1991, it has not been shown that the first respondent had addressed that meeting, that he had declared that the labour charges for the handloom weavers would be raised by 0.35 Paise per sq. metre, from June 1991. Consequently, issue No. 2(d) regarding the first respondent holding out promise of ratification for inducing the weavers to vote for him, would not arise.

20. In any event, it is apparent that there was no element of bargaining, even if the first respondent were to interfere on behalf of the weavers for amelioration of their grievances with regard to their long-standing demand and, in the circumstances, when no element of bargaining was involved, it would not amount to a corrupt practice as observed in Harijit Singh Mann, v. S. Umrao Singh (AIR 1980 Supreme Court 701) and R. Naiknara Rao, v. Appayya Dara Hatumantha (AIR 1990 Supreme Court 1889). I, therefore, answer issue No. 2(a) in the affirmative and issue No. 2(b)(c)(d)(e) & (f) in the negative.

21. Issue No. 3.—Before proceeding to consider the evidence adduced by the parties in the present case, it would be useful to consider the submissions which the learned Counsel for the parties made with respect to burden of proof and the standard of burden of proof in establishing corrupt practices under the Act. It is necessary to refer only to a few of the authorities which had been cited, since the principles are now well settled.

22. In Surender Singh v. Hardial Singh (AIR 1985 Supreme Court 89), it was held it is well settled that allegations of corrupt practice are quasi-criminal charges and the proof that would be required in support of such allegations would be as in a criminal charge. Charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. In para-16 of the report, the Court observed that the ratio

In *Dr. M. Chenna Reddy v. V. Ramchandra Rao* (1968) 40 Election Reports 3901 runs counter to the current of judicial thought on the point, a contrary view having been taken and close in point of time after *Dr. M. Chenna Reddy's case* in *Megaraj Patoda v. R. K. Birla* (AIR 1971 SC 1295). After considering a plethora of authorities, which took the view as in Megaraj Patoda's case, it was pointed out that a five Judge Bench in *Modan Singh v. Bhawna Lal* AIR 1964 SC 1560 held that the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous. However, as pointed out in *S. Harcharan Singh v. Dajjan Singh* AIR 1985 SC 236, while insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. In *State of U.P. v. Krishna Gopal* (AIR 1988 SC 2154), it was pointed out that though a person has a right not to be convicted of an offence which is not established by the evidentiary standard of proof beyond reasonable doubt and this is a higher standard, there is, no absolute standard, and what degree of probability amounts to "proof" is an exercise particular to each case. Forensic probability must, in the last analysis, rest on a robust commonsense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice.

23. In the very nature of things when, as in the present petition, the corrupt practice alleged is about the expenses having been incurred in excess of the limit prescribed, a matter which would not be within the knowledge of the petitioners, perforce reliance will have to be placed on circumstances and it would mostly be the circumstantial evidence which can be adduced. On behalf of the respondent, it was urged that since some of the witnesses, who had been called by the petitioners, have not supported the petitioners in every respect and those witnesses had not been declared hostile, the petitioners would be bound by the statements made by these witnesses.

In *Profulla Kumar Sarkar, v. Emperor* (AIR 1931 Calcutta 401), while considering the provisions of sections 154 and 155 of the Evidence Act, Ramkin C. J. observed :

"In my opinion, the fact that a witness is dealt with under section 154, Evidence Act, even when under that section he is cross-examined to credit, in no way warrants a direction to the jury that they are bound in law to place no reliance on his evidence, or that the party who called and cross-examined him can take no advantage from any part of his evidence. There is moreover no rule of law that if a jury thinks that a witness has been discredited on one point they may not give credit to him on another. The rule of law is that it is for the jury to say."

The learned Judge pointed out that the cross-examination must have some useful purpose, and if neither side can rely upon the witness, whatever answers he may give, it would be more convenient and less humiliating for all concerned that he should be allowed to go home.

In *Jalal Din. v. Nawab* (AIR 1941 Lahore 55), it was observed that there is no rule of law that a party must be bound by the statement of his witnesses, though the belief in such a rule is not uncommon and results in great harm in judicial trials in some of the subordinate courts.

It is not necessary to multiply the authorities, in view of the observations in *Sat Paul. v. Delhi Administration* (AIR 1976 SC 294), which approved the dictum laid down by Ramkin C. J. in *Profulla Kumar Sarkar's case* (AIR 1931 Calcutta 401). It is, therefore, clear that whatever may be the motive of the witnesses as exhibited in their evidence, their evidence will have to be judged on merits consistently

with the probabilities of the case and in the light of the other material brought on record, and merely because the petitioners had called the witnesses, it would not follow that whatever statements they might have made should be held ex-facie against the party calling them.

24. On behalf of the petitioners, it was urged that it was enough for the petitioners to discharge the burden of proof by adducing prima facie proof, i.e., they must establish such other relevant facts and circumstances which if unrefuted or left unexplained by the opposite party, would raise a presumption as to the existence of such fact in issue, but this is not what has been laid down in *Rasik Ram v. J. S. Chouhan* AIR 1975 SC 667), on which reliance for this proposition was placed. There, it was said :

"Secondly, even if the nature of the trial of an election petition is not the same in all respects as that of a criminal trial, the burden of proving each and every ingredient of the charge in an election petition remains on the petitioners. If a fact constituting or relevant to such an ingredient is pre-eminently within the knowledge of the respondent, it may affect the quantum of its proof but does not relieve the petitioner of his primary burden."

On facts, it was pointed out there that apart from the petitioner's derivative statement of his case, not a scintilla of evidence on the material facts had been brought on record by the petitioner.

In *Gajendra Singh v. State of U.P.* (AIR 1975 Supreme Court 1703), on which reliance was placed on behalf of the petitioners, it was observed that non-examination of Smt. Rambeti was the strongest possible circumstances to discard the defence version, because she alone could have been in the best position to explain whether the injuries were caused as a result of the shot fired by Shyampal Singh or just accidentally, but this was not indicative of the position of law laid down, because in para 3 of the report, it was said :

"It seems to us that the High Court lured by the attractive, ingenious, daring and dexterous defence taken by the defence case even before giving its finding on the truth or otherwise of the prosecution case against the accused. Such an inter-twined approach appears to have provided sufficient material for argument by learned Counsel for appellant that the High Court had made a completely wrong approach to the case put forward by the prosecution in the instant appeal. After going through the judgment of the High Court, we are, however, satisfied that the discussion of the defence case before the prosecution case has not resulted in any material prejudice to the accused and therefore although the High Court should have dealt with the prosecution case before touching the defence version, the error committed by the High Court is not of any consequence."

This would not support the plea that non-examination of witness by the defence would relieve the petitioners of the burden that lies on them, to establish the ingredients of the charge of corrupt practice, beyond reasonable doubt.

25. While dealing with the case of circumstantial evidence in *Kishore Chand v. State of Himachal Pradesh* (AIR 1990 SC 2140), it was laid down that it is necessary to distinguish between facts which may be called primary or basic facts on one hand and inference of facts to be drawn from them, on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way and in appreciation of the evidence in proof of those basic facts or primary facts, there is no scope for the application of the doctrine of benefit of doubt. Whether that fact leads to the inference of the guilt of the accused or not is another aspect. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused and those circumstances should be of conclusive nature and tendency and they should be such as to exclude all hypothesis but the one proposed to be proved by the prosecution. It would be in the light of these principles that the evidence on the other items of corrupt practice would fall to be considered.

26. Issue No. 4(i).—The petitioners' challenge in para 2.4 of the petition is to the amount of Rs. 10,500 shown in the return of expenditure in respect of the rent paid to Sri Devi Sharda Mangal Karyalaya for the period from 3rd May to 23rd May, 1991, the contention being that D. L. Atkari, Manager of Sri Devi Sharda Mangal Karyalaya, had given a quotation on 23-7-1991 for Rs. 1,500 per day as the rent, and on that basis the expenditure on corporation for the period would have been Rs. 21,000 and this has not been disclosed in the return of expenses filed by the first respondent with the District Election Officer.

27. While admitting the occupation of the premises during the period of 21 days, the first respondent contended in the written statement that his election agent contacted the proprietor of Sri Devi Sharda Mangal Karyalaya on 2-5-1991 for giving the ground floor for 21 days and Atkari, taking into consideration the relationship with the first respondent quoted the rate of rent as Rs. 500 per day, and this rate was quoted in the letter written by Gupta on 2-5-1991, and for the period of 21 days, the total amount Rs. 11,500 was paid as per the bill raised by Atkari. It is obvious that the figure 11,500 mentioned in the written statement was a mistake, because on the basis of Rs. 500 per diem for 21 days, the amount should really work out to Rs. 10,500.

28. Deorao Laxman Atkari (PW-34) denied that he had anything to do with Sharda Mangal Karyalaya, the burden of his evidence being that he has his shop in the premises of the said Karyalaya which is owned by J. P. Gupta, and he has to wait in the Karyalaya, if Gupta who resides in Dhantoli, is not available. He stated that he issued letter dated 23-7-1991 Exhibit 73, on a paper with the rubber stamp of Sri Devi Sharda Mangal Karyalaya and mentioned in it that the rent was Rs. 1,500 per diem. He claims that he wrote all those contents because two persons, who had come to ask for the quotation, asked him to write those contents, and they had come with a letter from the first respondent. One of these two persons, who pretended to have come on behalf of the first respondent and had brought a letter from him, was S. R. Pande, the second petitioner. He stated that he destroyed that letter, that he was not the Manager of the Karyalaya and that he himself paid Rs. 300 per month as rent for one room of the Karyalaya. It is obvious that the evidence of this witness about his being not the Manager of the Karyalaya runs counter to the admission in the written statement of the first respondent. The first respondent Meghe (1-RW1), contrary to his own pleading, stated that he personally had the talk with Gupta, the proprietor of Sri Devi Sharda Mangal Karyalaya and had obtained the quotation Exhibit 66 from him at the rate of Rs. 500 per diem and that he had taken only the hall for his election office and had constructed a pandal in the open site nearby. It is clear that the first respondent was not telling the truth when he spoke about his personally entering into the talk with Gupta, because his contention in the written statement was that the transaction was settled by his Election Agent, Sudhakar Deshmukh, with Atkari, and he was contradicted with that portion of the written statement in his cross-examination. Sudhakar Deshmukh was not examined as a witness, but that would not relieve the petitioners of the burden which lay on them to show that the rent of the premises was Rs. 1,500 per diem. The document on which they relied Exhibit 73 was issued on 23-7-1991 Deorao Atkari denied that he was the person who could have let out the premises and that the contents were voluntarily written by him. As I have already pointed out, Deorao Atkari has also shown by his own evidence that he is not a witness of truth. No evidence was adduced by examining some other persons who had taken the premises on rent immediately before or after the election period, to show that the normal rent was Rs. 1,500 per diem and that Rs. 500 per diem had never been charged by the proprietor of Sri Devi Sharda Mangal Karyalaya. The quotation Exhibit 73 only shows that Nagpur Transport Federation could be given the hall of Sri Devi Sharda Mangal Karyalaya at Rs. 1,500 per diem, which were the ordinary charges. There is nothing on record to show that Nagpur Transport Federation, of which the petitioner No. 2 claimed to be an office bearer, really wanted the premises for their use and it was not unlikely that if a representation were to be made that the premises were required for a Government agency, inflated rates might be quoted in the hope that the persons concerned could profit by quoting inflated rates. In the present case, the evidence

is wholly wanting to show that the premises were actually let out to the first respondent at Rs. 1,500 per diem, or at other higher rent that was being charged for the premises. I see, therefore, no substance in the plea that the charges in respect of the premises would have been more than Rs. 500 per diem and that the actual expenditure incurred by the first respondent on this count had been suppressed while filing the return of expenses with the District Election Officer.

29. Issue No. 4(ii).—The allegations in para 2.5 of the petition referred to the expenditure for xeroxing of documents got done from Vishwa Bharti Typing Institute, Nagpur, the contention being that though the total amount of expenditure shown was Rs. 4,650, the actual expenditure was not less than Rs. 10,000. The only evidence on this point is that of the first petitioner Bapat, to the effect that 49 reams of duplicating paper would be 20,000 fullscape sheets and the actual expenditure on xeroxing and typing and the cost of paper would be minimum Rs. 10,000 and not only Rs. 4,650 as shown in the return. This version does not bear scrutiny, because in his cross-examination he could not say, by referring to the bill Exhibit 70/5, whether reams of duplicating paper were rolled paper or pieces cut to fullscape size, and the dimensions given therein would mean cut paper. He never purchased paper from Ravimesh Enterprises mentioned in Exhibit 70/5, and he did not know what Ravimesh Enterprises understood by a ream. He admitted that the paper cost Rs. 10,000 was merely his guess and estimate on what a ream means and is based upon his understanding of the item. He did not get any xeroxing work done from Vishwa Bharti Typing Institute. It is not possible to rely on this evidence for holding that the expenditure was deliberately shown as Rs. 4,650, though actually it could not have been less than Rs. 10,000, and this contention must, therefore, be held not to have been established.

30. Issue No. 4(iii).—The challenge in paras 2.6 to 2.8 of the petition is to the expenses shown by the first respondent in respect of the hire charges for auto-rickshaws laid to Price Travels, as well as hire charges for taxes—Rs. 11,000 and Rs. 7,200 respectively. The allegation is that for using an auto rickshaw fitted with make and battery and engagement of services of two persons as auxiliaries, the expenses would not be less than Rs. 460 per day per auto-rickshaw and the expenditure on the hiring of auto-rickshaws could not have been less than Rs. 18,040.00, the expenditure on that account being on 44 auto-rickshaws, as stated in the return of expenditure.

31. Vijay Rathi (PW-33) stated that he had given on hire many vehicles to the BJP, Congress (I) and also personally to the first respondent Meghe, during the election. He had been asked to arrange for the vehicles by the first respondent, a position which the first respondent admitted in his evidence. Vijay Rathi sent the automen to the first respondent's office in Sri Devi Sharda Mangal Karyalaya, and he supplied seven auto-rickshaws on 8-6-1991; seven, on 9-6-1991; and nine, on 10-6-1991, and the rates had been fixed by the person who had come for asking for the auto-rickshaws. These auto-rickshaws were supplied by Pradeep Uddoliya. He paid Rs. 1,750 to Pradeep Uddoliya on 19-5-1991, 20-5-1991 and 21-5-1991, under the receipts Exhibits 649, 650 and 651 executed by Pradeep Uddoliya. According to Vijay Rathi, in addition to these auto-rickshaws, on 8-6-1991, seven auto-rickshaws; 9-6-1991; seven auto-rickshaws; 10-6-1991, five auto-rickshaws; and on 11-6-1991 four auto-rickshaws were supplied for the election of Datta Meghe by the owner of Baba Pan Mandir and on 12-6-1991, he paid Rs. 5,750 to Shaligram Kanpur, owner of Baba Pan Mandir, under receipt Exhibit 652. Thus, in all $23+23=46$ auto rickshaws had been supplied.

32. The learned Counsel for the petitioners relied on the statement of Vijay Rathi that in addition to the auto-rickshaws supplied on 8-6-1991, 9-6-1991 and 10-6-1991, some more auto-rickshaws were supplied, for urging that many more auto-rickshaws, viz., in all 67, were supplied and not only 44. This however, is not the burden of the evidence of Vijay Rathi, and what is more important is that even the petitioners did not challenge the position that only—auto-rickshaws had been supplied, in para 2.7 of the petition. The correctness of the return of expenditure with regard to the 44 auto-rickshaws and their actual costs, is borne out by the evidence of Vijay Rathi. The first respondent maintained that he

had hired only 44 auto-rickshaws from Rathi and he denied that he had suppressed the expenditure of Rs. 11,000 on that count. The position, that more than 44 auto-rickshaws had been hired and the expenditure incurred on hiring of these auto-rickshaws had been suppressed, is not established by the evidence.

24-7-1992 :

33. Another submission was that the normal hire charges for an auto-rickshaw have for a full day would not have been less than Rs. 150 per day and the use of an auto-rickshaw would entail consumption of petrol not less than seven litres, which would cost Rs. 110, and the other equipment required, v.z., speaker (mike) and battery, would cost Rs. 150 per day, in addition to the wages of the two announcers, which would not be less than Rs. 25 per person. Thus, the expense on each auto-rickshaw would be Rs. 460 per day, and the first respondent had actually engaged not less than 150 auto-rickshaws per day in the course of election, and this expenditure has been suppressed. With regard to the use of the additional 150 auto-rickshaws, no particulars have been furnished regarding the days on which they were engaged and the number of auto-rickshaws engaged on every day. In the absence of these particulars, the plea would have to be considered with great care.

34. There is no creditable evidence to show that 150 additional auto-rickshaws were engaged, and Vijay Rathi (P.W.-33) does not support this version. P.W.-1 Bapat stated that he estimated the expenses on each auto-rickshaw at Rs. 460 per day and has given the break-up as mentioned in the petition, the total of which amount worked out to Rs. 260 per day. In his cross-examination, he admitted that he had given the expenditure on each auto-rickshaw on the basis of what his party had spent on the auto-rickshaws engaged by it. With regard to the wages at Rs. 25 per day, he stated that they are not exactly wages, but the amount spent on the diet of the announcers. The first respondent's version is that the announcers were the volunteers of the party who did not charge any remuneration. Petitioner Bapat could not say which auto-rickshaws went round in which area and their numbers the days on which the first respondent had engaged them and the distance in kilo-metre over which they were used. He could not even give the details of the auto-rickshaws used by his own party, and his evidence, therefore, about the additional auto-rickshaws is no worthy of credit. It was not even pleaded that 150 auto-rickshaws alleged to have been engaged by the respondent No. 1 came from Prince Travels, and the version regarding the use of additional auto-rickshaws, has to be rejected. Further, Bapat's evidence is merely based on guess work, while according to Vijay Rathi (P.W.-33), the charges included the cost of battery and mike and the other equipment. In Exhibits 657, 658 and 659, which are the bills issued by Prince Travels, there is a mention that the charges for seven auto-rickshaws Rs. 250 per diem included the cost of fuel and mike. According to him, in the voucher Exhibit 652 dated 12-6-1991, the words "with mike" indicated that the entire equipment that was necessary for the use of mike, had been supplied. The words were omitted from the three vouchers Exhibit 649, 650 and 651, dated 19-5-1991, 20-5-1991 and 21-5-1991 inadvertently, but the charges for those auto-rickshaws at Rs. 250 per diem included this equipment as well as cost of fuel and oil. There is no reason why Vijay Rathi's account should not be accepted with regard to the actual charges incurred by the first respondent on the auto-rickshaws, and I find that it has not been proved that the first respondent suppressed the real expenses on hiring the auto-rickshaws.

35. In para 2.8 of the petition, the allegations are that Prince Travels had only two taxies, but sixteen taxies have been shown to have been hired at the rate of Rs. 450 per taxi per day, for the period 19-5-1991 to 10-6-1991, the total expenses being Rs. 7,200. The first respondent's version is that the vehicles were not used for the entire period but were used for the period excluding the period of seven days mourning following the assassination of Rajiv Gandhi. According to the petitioner, the normal charges for each taxi would be Rs. 300/- per day, excluding the cost of fuel, but the vouchers prepared by Prince Travels showed that the charges were inclusive of fuel. The consumption of each taxi could not have been less than 20 litres petrol per day, and that would cost Rs. 300 and so Rs. 4,800, which must have been the expenses on fuel, have been deliberately suppressed by the first respondent. Petitioner Bapat, however,

submitted that his estimate was merely based on guess work regarding the expenses to be incurred on taxes and anniversaries, the premises being that the vehicles must have been used continuously throughout the day. This estimate, which presumes several factors, obviously cannot be accepted. According to Vijay Rathi (P.W.-33), though he had only three vehicles of his own, as a matter of service to his regular customers, the other vehicles were taken on hire from others and given on hire to the first respondent. He asserted that the sum for the use of the taxies were quoted to the first respondent at the rate of Rs. 450 per day, and this was also mentioned in the voucher dated 8-7-1991 Exhibit 601. According to him, if any additional petrol was necessary, it would be supplied by the user. Even Bapat's evidence shows that the second respondent Basawaraj Patil had shown in his return of expenses Exhibit 102 the rate as Rs. 300 per taxi and on the basis that 10 litres of petrol was put in the taxi, the total expenditure on it would be Rs. 450 per day. He admitted that the sums, which were produced by the first respondent with regard to the taxes, showed a reduced rate. He admitted that if a vehicle is handed over to a party worker for publicity, he would fill additional petrol if required. Considering this evidence, it is not possible to accept the version that the expenses incurred on the taxies were suppressed by the first respondent, while filing his return of expenses, June 1991, is, therefore, answered in the negative.

36. Issue No. 4(iv).—In para 2.9 of the petition, the contention is that three diesel cars Nos. MH1 1004, MHV 5853 and MH1 31 41400—were taken on hire by the first respondent, and he has not shown the hire charges of these vehicles. The first respondent has stated that these vehicles had not been taken on hire, and there is no evidence to show that these vehicles had, in fact, been taken on hire and the expenditure on hiring these vehicles had been suppressed. It is not unusual that the friends and sympathisers and party-workers lend their vehicles to a candidate, and unless there is evidence to show that some expense was incurred on hiring the vehicles, merely because the vehicles did not belong to the candidate it would not follow that he must have paid for hiring of the vehicles.

37. Though, there was no allegation with regard to an air-conditioned taxi having been supplied in the name of Dighe, the principal of Datta Meghe Polytechnic, and another to first respondent's son—Sagar Meghe, an attempt was made to introduce the expenses on these two vehicles, after inspecting the account of Vijay Rathi (P.W. 33). At page 107 of Rathi's ledger, there is an entry regarding 'Code' c/o Sagar Meghe' and another in the name of 'Dighe c/o Datta Meghe Polytechnic'. Rathi's evidence shows that in the entry dated 10th May, 1991 in the Rozmal (Ex. 648/9), at page 40, the word 'Polytechnic' which follows the words 'Dattaji Meghe', has been written afterwards and in different ink and the word 'Dighe Saheb' is also written in different ink. On 7th May, 1991, an air conditioned Ambassador car, bearing No. MH 31/2133 was given on hire and charges Rs. 3,158 were mentioned in the bill Exhibit 655. The Ambassador car had been hired for four days from 4th May, 1991 to 7th May, 1991. Though Vijay Rathi was not acquainted with Dignade, he knew that he was the Principal of Datta Meghe Polytechnic and he used to call vehicles on phone whenever he required them.

38. The learned counsel for the petitioners urged that there was a deliberate attempt to disguise the transactions which had been personally entered into on behalf of the first respondent for the purposes of election by showing the expenses in the names of others and by altering the connected documents. However, Rathi's evidence shows that he had an air conditioned taxi, but he did not give it on hire during election period for the purposes of election and that the vehicle was rented to Dighe on daily basis, and the bill was paid by Dighe and not by respondent No. 1. It is apparent from the first respondent's evidence that his son Sagar Meghe has his separate business and pays Income-tax and wealth-tax. In these circumstances, even if a vehicle were to have been requisitioned by Sagar Meghe, it would not follow that it must have been for the use of the first respondent, at the time of election, and that the expense for the vehicle was borne by the first respondent. The prohibition is to the excess expenditure incurred by the candidate either by himself or through others, and not on the others' using their

own money for the benefit of the candidate. In view of the positive evidence of Vijay Rath, it is difficult to infer that the two vehicles were hired by the first respondent for the purposes of his election and he bore the expenses thereon. Merely because there is some change effected in the accounts maintained by Vijay Rath, it would not lead to the inevitable inference that the transaction had been disguised for the benefit of the first respondent. Obviously, there was no reason why Rath should have falsified his own accounts, and it is idle to expect that he would do it only for the purpose of helping the first respondent.

In the absence of the necessary and positive pleadings that the air conditioned vehicles were used and cost incurred by the first respondent, it is difficult to hold that the expenses on these vehicles had been suppressed by the first respondent.

39. The allegation in the petition is that Pramod Auto Station had sold 300 litres of diesel over and above the quantity of diesel shown to have been purchased by the first respondent in the bill Nos. 161 and 162 filed alongwith the statement of expenditure, for the period from 3rd May, 1991 to 21st May, 1991 and for the period from 3rd June, 1991 to 11th June, 1991, and the first respondent had purchased 40 litres of diesel over and above the quantity shown by him in bill No. 163. No details regarding 340 litres of diesel so purchased have been given in the petition, and curiously enough, without mentioning how 750 litres of diesel, which is said to have been purchased from Pramod Auto Station, was purchased without giving any particulars thereof. The cost of 750 litres calculated at Rs. 4,672.50 is said to have been suppressed. This position is denied by the first respondent in his written statement.

40. Deepak Deshpande (P.W. 35), who is the Manager of Pramod Auto Station, stated that Pramod Auto Station supplied diesel to the first respondent during the last Lok Sabha election, and a credit account was opened for him upon instructions from Sagar Meghe. The practice was to deliver diesel against the credit slips issued from a credit slip-book supplied to Sagar Meghe by whoever was authorised to issue the credit slip and from the bills were prepared. The original bills together with original credit slips issued by the customers used to be sent to the customers, and the copies of the bills with regard to the diesel supplied to Datta Meghe had not been retained. The only registers which were maintained by Pramod Auto Station were the daily sales record and the receipt books. Bill No. 161, Exhibit 71 shows that 750 litres of diesel worth Rs. 4,298.70 was supplied from 3rd May, 1991 to 19th May, 1991 for vehicle Nos. MH 31/1403; MZV 5835 and MKS 1002. Bill No. 162, Exhibit 671-B, was for 60 litres of petrol supplied on 21st May, 1991 for these three vehicles; what is added up is Rs. 4,672.50. Bill No. 163, Exhibit 671-C, is for 450 litres of diesel supplied from 3rd June, 1991 to 11th June 1991, worth Rs. 2,803.50. On bill No. 162, Exhibit 671-R, there is an endorsement that Rs. 1,800 were received on 5th May, 1991 and 11th May 1991; Rs. 500 on 19th May, 1991; and Rs. 572.50, on 21st May, 1991. At the foot of Bill No. 163 also there is an endorsement that Rs. 1,800 were received on 6th June, 1991 and Rs. 103.50, on 10th June 1991. Deepak Deshpande stated that the amounts were received, as stated. However, the learned Counsel for the petitioners urged that there are other bills, being Bill No. 163, dated 6th June, 1991 for Rs. 1,800 as mentioned in the receipt Exhibit 670-A; bill No. 161, dated 11th May, 1991 for Rs. 1,800 as mentioned in the receipt Exhibit 671-B and bill No. 161 dated 19th May, 1991 for Rs. 500 as mentioned in the receipt Exhibit 670-C. The original bill Nos. 161, 162 and 163 do not bear any dates of issue, but it is noteworthy that the dates of payments and the amounts mentioned in the receipts are to be found at the foot of the bills No. 162 and 163, which would mean that the dates mentioned in the receipts as against the bills were not the dates of issue of the bills but the dates of payment. Deepak Deshpande stated that there were no dates on the bills, which he had checked, and that they had come to be prepared on the basis of credit slips and were sent in May, 1991 to the first respondent. The learned Counsel for the petitioners suggested to the witness that the bills which had been mentioned in the receipts were of dates different from those which appeared on the bills produced here, but that suggestion was denied. The witness also denied that Pramod Auto Station had received more amounts than shown in the receipts, and for these extra amounts, additional bills had been issued bearing the dates appearing against them, on the receipts mentioned above.

41. The learned Counsel for the petitioners urged that there was a deliberate attempt by Pramod Auto Station to falsify the documents, and it was entirely unlikely that while issuing the bills even the original credit slips, which would be the only evidence in possession of the Pramod Auto Station, would be parted with, only in the hope that the bill would be paid, leaving no material whatsoever with the seller, to justify the claim, if it were to be disputed later. It is true that the course adopted by Pramod Auto Station is not the one which a prudent businessman would normally adopt. First respondent stated in his evidence that he received credit slips along with the bills and that he had paid all those bills, and he supported the practice followed with regard to him by Pramod Auto Station. He stated that he bought diesel from Pramod Auto Station only on credit by issuing credit slips. He could not say if the bill No. 163 dated 6th June, 1991 and bill No. 161 dated 11th May, 1991 had been filed before the District Election Officer while filing the statement of expenditure. He stated that he had filed the bill dated 5th May, 1991 before the District Election Officer. However, it is clear that there was some confusion in this respect in the mind of the first respondent when he stated about these bills, because evidently, in view of the evidence of Deepak Deshpande, there were only three bills and there were no other transactions about the sale of diesel. According to the first respondent, rough notes were kept by Ghadge and on the basis of those notes, the statement of account had been prepared. Deepak Deshpande's evidence shows that another employee of Pramod Auto Station, S. N. Deshpande, used to maintain the ledger Exhibit 668. There was no suggestion to Deepak Deshpande that this ledger had been prepared subsequently. The daily sales record evidently did not contain details about the sales on credit. The learned Counsel for the petitioners urged that it was unlikely that the credit slips which were issued to the first respondent might have been destroyed and there was a deliberate attempt to suppress the credit slips, and an adverse inference would therefore, be justified against the first respondent for not producing the credit slips which had been supplied to him. It would, however, be seen that the petitioners did not examine Pramod Udhaji of Pramod Auto Station whose name was mentioned in the petition as the source for information regarding Pramod Auto Station. Not a single question was put to Deepak Deshpande on behalf of the petitioners, to show that any quantity in excess of that shown in the bills had been sold. First petitioner Barat stated that the three vehicles had used 750 litres of diesel and not 1200 litres and that he had not seen whether these three vehicles had been used and when and the distance that these vehicles must have travelled.

42. In Razik Ram v. J. S. Chouhan (AIR 1975 SC 667) it has been pointed out that the principle underlying section 106, Evidence Act, which is an exception to the general rule governing burden of proof, applies only to such matters of defence which are supposed to be especially within the knowledge of the defendant-respondent. It can not apply when the fact is such as to be capable of being known also by persons other than the respondent. In any event, the petitioners are not relieved from their primary burden of establishing that additional quantity of diesel had been sold to the first respondent by Pramod Auto Station. Pramod Udhaji, who had been cited as a witness and was present in Court in response to the summons, was not examined; nor was S. N. Deshpande, the person who had maintained the account and delivered the diesel. In these circumstances, no adverse inference would be justified against the first respondent. In the present case, the question of adverse inference would be academic, because the first respondent had entered the witnessbox and denied that any extra diesel was purchased. Unless there is evidence to show that there were some more credit slips which evidenced the sale of extra diesel and they had been delivered to the first respondent and they had been deliberately withheld to adverse inference would be justified. I, therefore, answer issue No. 4(iv) in the negative.

43. Issue No. 4(v).—The pleading in respect of the contention which is subject of this issue, is to be found in para 2.10 of the petition, to the effect that 1180 litres of petrol over and above the quantity shown by first respondent in the return of election expenses, worth Rs. 17,900, had been purchased from M/s. Raj Automobiles. The purchase of petrol was shown under the bill Nos. 401 to 404, for the period from 1st May, 1991 to 12th June, 1991, for three vehicles bearing Nos. MH 31 G1722; MH 02-2200 and 7069. Though

these vehicles were used throughout the period of election, their fuel charges were not shown in the election expenses and consolidated bills came to be issued for the supply of petrol on different rates for different vehicles.

44. Shekhar Shankarao Gadge (P.W. 36), who used to work as an accountant with Raj Automobiles, a concern owned by first respondent's wife Shantimal, was also the person who had maintained the rough account for the first respondent. According to him, a credit account was started for respondent No. 1 at the instance of Mrs. Meghe and credit slip-books had been issued to the respondent No. 1. No account or the credit slip-books had been kept and whenever petrol or oil was purchased, a copy of the credit slip used to be given to Raj Automobiles and the other was retained by the customer. All these original credit slips are claimed to have been returned to the first respondent while issuing the bill for the quantity sold. The account was operated from 1st May, 1991 to 16th June, 1991 by the first respondent, but Gadge's evidence shows that no record was maintained of the vehicles for which fuel was supplied on the basis of the credit slips, though the vehicle numbers were mentioned in pencil and they were vehicle Nos. 1422 and 7069. A curious feature of the bill books maintained by Raj Automobiles was that in the bill-book from which the bill Nos. 401 to 403 were issued to the first respondent, the dates have not been mentioned, while in respect of other bills issued to the other customers, dates have been mentioned. Bills were issued from this bill book up to 30th October, 1991 and the remaining bills were blank. The other bill-book, which was maintained from 30th November, 1990 to 30th June, 1991—Exhibit 674, does not contain any bill issued to the first respondent. The bill book Exhibit 673 from which bills were issued to the first respondent contains carbon copies of the bills issued for the period from 26th May, 1991, 1st April, 1991 onwards (Bill Nos. 406, 407 and 408). It is unusual that two bill books should have been maintained for the same period and that the one, in which the bills regarding the transactions of the first respondent had been noted Exhibit 673, should have been opened with the transactions of the first respondent. It is only bill No. 409 from bill book Exhibit 673 which has the date of its issue as 31st May, 1991, the preceding bills being only for the transactions for certain other parties, and that would show that no reliance can be placed on the carbon copies of the bills of the first respondent in bill book Exhibit 673.

45. Shekhar Gadge (P.W. 36) could not say on which dates the bills Nos. 401 to 403 were sent to the first respondent. In the carbon copy of the original bill Exhibit 673, which had been filed before the District Election Officer, the date was seen as 17th June, 1991, though no such date appeared on its carbon copy. The same date appears on the original bill Nos. 402, 403 and 404 (Exhibits 673 to 678) filed before the District Election Officer, and there can be no doubt that the bill book Exhibit 673 had been opened only to serve the occasion, namely, the purpose of making the statement of account before the District Election Officer. Along with the bills for petrol, the first respondent had filed original bill No. 405, dated 17-6-1991 (Exhibit 679), showing that 60 litres of oil worth Rs. 1,539.69 had been sold between 4-5-1991 to 16-6-1991. A copy of that bill was also annexed to the petition at page 153 Annexure No. A7-XXXXVI and it mentioned that oil was supplied from 4-5-1991 to vehicle No. MH 31 G 1722; and from 17-5-1991, onwards to vehicle No. MHI 1022, MHO 2/2200 and 7069. The total quantity of oil supplied for MH 31 G 1722 was 22 litres as against 470 litres of petrol; for MHI 1022, 10 litres of oil as against 90 litres of petrol; 14 litres of oil for MHO 2/2200 as against 60 litres of petrol; and 14 litres of oil for 7069 as against 80 litres of petrol. The first respondent has admitted in his evidence that besides vehicle Nos. 1722, 2200 and 1022, he used car Nos. 1422 and 7069. According to the petitioners, the total quantity of petrol, which has been shown to have been used for vehicle Nos. 1722, 2200 and 1022 was much more than that mentioned in the bills, the sale of petrol having been shown to have been made for the other two vehicles from 17-5-1991, though for vehicle No. 1722, it was shown from 1-5-1991. The first respondent stated in his evidence that he had procured one petrol vehicle from one Bisan, two

from his brother Vitthal Meghe, one from Ajandrao and one from Nagur Jiwawal Bansiba, and the last one, which number was 7069, was being used by him. He also admitted that he had the petrol vehicles from 1-5-1991 to 12-6-1991, excluding some days, and the days which he excluded were three or four days coinciding with the date of assassination of Rajiv Gandhi. It is apparent that the petitioners' version that the first respondent used the three petrol vehicle Nos. 1722, 2200 and 1022 from 1-5-1991 onwards, is admitted by the first respondent, excluding only three or four days upto 12-6-1991. The learned Advocate General, who represented the first respondent, urged that what has been admitted was only that the first respondent had these three vehicles from 1-5-1991 to 12-6-1991, excluding some days and that it was not the use of these vehicles over the entire period beginning from 1-5-91 that was admitted, there being a clear distinction between one's having a vehicle and one's using it, and it may be that the other two vehicles may not have been used until 17-5-1991 and, therefore, it cannot be inferred that there was a suppression in stating the expenses incurred on the two vehicles.

46. Gadge (P.W. 36) states that only 719 litres of petrol and 60 litres of oil was supplied to the first respondent, but his account is based only on bill Nos. 401 to 405, there being no other evidence in this respect. It is unusual that the credit slips should have been sent to the first respondent along with the bills and even granting that the first respondent's wife was the proprietor of Raj Automobiles, it is not likely that the primary evidence of liability in the shape of credit slips would be parted with and handed over to the customer. First respondent stated that he received these credit slips alongwith the bills, but he destroyed them after the bills were paid and he did not buy petrol from any other place except from Raj Automobiles during the election period. The learned Advocate General urged that there is no reason why the positive evidence of Gadge about the quantity of the petrol and oil supplied and the statement of the first respondent regarding the quantity of petrol and oil he bought should not be accepted. Gadge, as I have already indicated, is not only an employee of the first respondent's wife but had also helped him in maintaining the account of his expenditure. Bill Nos. 401 to 405, which were prepared for the transactions between Raj Automobiles and the first respondent obviously came to be prepared afterwards and any evidence based on those bills would be tainted evidence and when it is obvious that there has been a suppression of the real expense, the court is not rendered helpless. It was observed in Megraj Patodia Vs. R. K. Birla (AIR 1971 Supreme Court 1295), as follows :—

"But it is true as observed by the Bombay High Court in Shivram Sawant Bhonsale Vs. Pratap Rao Deorao Bhonsale (1955) 17 ELR 37(Bom) that if the court comes to the conclusion that an item of expenditure has been suppressed in the return of election expenses, the mere fact that there is no sufficient evidence about the amount that must have been spent is no ground for ignoring the matter. It is the duty of the Court to assess all expenses as best it can and though the court should not enter into the region of speculation or merely try to guess the amount that must have been spent, it would generally be possible to arrive at an amount of expenditure on a conservative basis and where it is possible to arrive at any such estimate, such estimated amount should be held as not shown by the candidate in his election account."

47. With regard to the submission of the learned Advocate General, that that the statement of the respondent No. 1 was only that he had his vehicles, which is distinct from the use of vehicles, it must be noted that the first respondent, who could have said that he had not used the two other vehicles for the entire period, has refrained from saying so. For the third vehicle, petrol had been purchased from 1-5-91, as is apparent from the bill Exhibit 673. It is doubtful whether even this would represent the real quantity sold for vehicle No. MH 31 G 1722, because the material evidence in this respect has been suppressed by Raj Automobiles, but in the absence of any other material, the quantity used for MH 31 G 1722 from 1-5-1991 to 15-6-1991 as on a conservative basis, be taken as the standard for the total quantity used by the other two vehicles also. The total quantity used for MH 31 G 1722 works out of 470 litres of petrol and 22 litres of oil.

48. The petitioners, relying on the evidence regarding the ratio of oil to petrol and on the basis that in all 60 litres of oil had been used for the three vehicles, urged that in Automobiles Engineering Volume-II by Dr. Kirpal Singh, 6th Edition, at page 239, it has been stated that in a petrol engine working under normal condition, average consumption of lubricating oil is estimate at 900 to 1100 kilo metres per litre. The consumption increases as the piston and cylinder wear out. On this basis, the vehicles must be deemed to have been run over a distance of about 60,000 kilo metres. Since one of them was 118 N.E. No. 7069 and two Ambassador cars, the learned Counsel for the petitioners urged that the normal consumption would be one litre of petrol for 10 kilo metres and on that basis about 6000 litres of petrol must have been used, and the account given in the bills of the quantity sold to the first respondent, must be regarded as grossly inadequate. With regard to the ratio of oil to petrol, Prakash Badiye (P.W. 33), a Mechanical Engineer, stated that in one litre of oil, the run would be about 1000 kilo metres, if the average consumption of the vehicle is 10 kilo metre per litre of petrol, and a vehicle, which consumes more petrol, would also consume more oil. He stated the ratio from his experience and not from any book, nor from any information which he had collected on the subject from the customers, he being the nephew of the one of the ex-partners of Raj Automobiles before the concern was taken over by Mrs. Shalitata Meghe. According to him, if the engine is old, it would not duly consume more oil, but also more petrol, and his inference was based on the experience he had of the fiat car which belongs to his father. The evidence of Vijay Rathi (P.W. 33) is also to the same effect, and there is no reason why the evidence regarding the ratio of consumption of oil to petrol being one litre of oil to 100 litres of petrol should not be accepted.

49. The total quantity of petrol shown to have been purchased for vehicle No. MH 31 G1722 was 470 litres and oil, 22 litres. The quantity of oil put does not appear to have any relation to the amount of petrol used, but there can be several factors, such as deficiency of oil initially in the vehicle and such others, and it would be hazardous only to go by the oil-petrol ratio for ascertaining the amount spent on petrol. For the other two vehicles, viz., vehicle No. MKI 1022 and MH 02 2200, ninety and eighty litres of petrol have been shown to have been used from 17-5-1991 onwards. Obviously, if these vehicles were to have been used from 1-5-1991, and must have been used by the first respondent from that date, because he admits that he had these vehicles with him and he had borrowed them only for the purposes of election; taking quantity of petrol used for the vehicle No. MH 31 G1722 as the basis, the cost of 470 litres has been shown to be Rs. 6,927.80, and for three vehicles, it would work out to Rs. 20,783.40. Deducting from this an amount of Rs. 2,505.80 which had been shown to be the cost of petrol used for the other two vehicles, the suppressed expenditure would be Rs. 18,277.60.

50. The learned Counsel for the petitioners urged that in view of the admission that two more vehicles i.e., vehicle Nos. 1422 and 7069 which is N.E. 118, had been used, the suppression should be taken in respect of these two vehicles also, because though oil is shown to have been sold for these vehicles, and it would not be that only oil was purchased for the two vehicles, and not petrol. However, as I have already indicated, the petitioners have come with the case that three vehicles were used and there has been suppression of the use of 1180 litres of petrol worth Rs. 17,900, and not that five vehicles were used. It was urged that it was not necessary to plead all these details, because a corrupt practice under section 123(6) of the Act would be one corrupt practice and the items of expenditure would be the parts of one and the same corrupt practice. In Vatal Nagraj v. R. Dayanand Sagar (AIR 1975 Supreme Court 349), there were errors in particulars of car numbers and they were not rectified at the later stage, and it was held that proof of minor variance with alleged particulars may be allowed, the course open to the opposite party being to satisfy the trial Judge of prejudice sustained and of opportunity for adducing rebutting evidence. To shut out cogent and clear evidence of particulars of corrupt practice the ground itself being in the pleadings) on processual technicalities is to orphan the real, though absent, party, viz., the silent constituency. These observations would, however, apply to

minor variations and not what are described as material particulars. The petitioners came with the case that three cars were used and that an expenditure of Rs. 17,900/- was suppressed. There is no question here about the discrepancies in the registration numbers of the cars used. The errors regarding the registration numbers of the cars could be a matter of detail, but it would not be so in respect of the total number of vehicles used. In the absence of proper pleading, the petitioners will not be entitled to ask the Court to foalten the liability on the first respondent regarding the use of five vehicles.

51. The learned Advocate General urged that the ratio of oil to petrol was something which came as a surprise to the first respondent at the trial, because this position had not been pleaded. It is, however, apparent that the bill regarding the oil supplied by Raj Automobiles had been filed as annexure to the petition. The consumption of oil was being used only as the basis for indicating what could be the estimate of the total expense on petrol, and this was a matter purely of evidence and not of pleading. Though the evidence indicates that there was a suppression regarding quantity of petrol worth Rs. 18,277.60, the estimate cannot exceed the petitioners' own estimate about the total of the expenditure suppressed on this count, which was Rs. 17,900/-. This amount of Rs. 17,900/- shall have to be added to the total amount shown in the return of expenditure filed by the first respondent before the District Election Officer.

52. Issue No. 5 (b)(i) & (ii) : The allegations in this respect are contained in paras 2.11 to 2.14 of the petition and pertain to the voter-cards alleged to have been sent to 12,43,382 voters in the Constituency by the first respondent, after getting them printed at the cost of Rs. 2,25,000.00. It is contended that though the card at Annexure-9 purports to have been published by Nagpur City District Congress Committee, the expenditure incurred on printing and distribution had been authorised by the first respondent by getting them printed at Shakti Offset Works, and this expenditure has not been shown in the election expenditure lodged under section 78 of the Act. Similarly, the first respondent had got printed posters of different sizes, namely, one lac of 20" × 30" one lac fifty thousand of 18" × 23" and seventy-five thousand of 15" × 20". Each one of the 1250 booths had an average 300 posters of these sizes exhibited, and the first respondent incurred the expense of Rs. 3,40,250.00 on printing 3,25,000 posters, between 25-4-1991 and 21-5-1991. Though these posters also purport to have been issued by the President, Nagpur City District Congress Committee, the expenditure on printing and fixing those posters was authorised by the first respondent and the expense had not been shown in the return of expenses. The first respondent denied this position in the written-statement, though the appeal in the voter-card (Annexure-9) was to cast the vote in favour of the first respondent. It is alleged that the first respondent learnt that Nagpur City District Congress Committee had printed about four lacs voter-cards at its own cost, as well as the posters. The contention was that as before Congress (I), a national party, which has its organisations at various levels had supplied the posters, and this was a practice common to all the parties, such as BJP and Janta Dal.

53. P.W.-1 Bapat stated that the voter-cards were issued eight days prior to the date of the poll, to every voter, and since there were 12,40,000 voters, as mentioned in the voters' list Exhibit 74, the total cost of printing these cards would be Rs. 2,25,000/-. In the case of the second respondent Banwarilal Prohit, the voter-cards had been printed by the BJP and were distributed by the workers of that party and it was ensured that every voter would get a card. With regard to the posters, he stated that the posters were used by the first respondent on a large scale and they were of three different sizes and the specimen were produced at Exhibits 75 to 78, and about three lacs posters were struck all over the Constituency. In his cross-examination, when shown the specimen of a voter-card printed for respondent No. 2, he stated that they were printed by the BJP, and Shakti Offset had done this work for it. There is no direct evidence to indicate that though the voter-cards and the posters were published by the Nagpur City District Congress Committee, the expenditure was borne by the first respondent.

54. On behalf of the petitioners, four office-bearers of Congress (I) were examined. Suresh Deotale (P.W. 41) who is the President of Nagpur Gramin Congress since 1978, stated that Baliram Dakhne (P.W. 42) was the Cashier and

Talatole was the Vice President. Baburao Zade (P.W. 43) is the Secretary of Grahmin Congress, while Marotrao Kumbhalkar (P.W. 46) was the Treasurer of Nagpur District Congress Committee from 7-9-1989. According to Suresh Deotale, no accounts were maintained in respect of the election expenses either for the local bodies. Legislative Assembly or Parliament, and all the work regarding the election and expenses was entrusted to Baburao Zade for the Parliamentary election. Baburao Zade is a teacher and General Secretary of Grahmin Congress. Only Kamptee sector of the Parliamentary Constituency fell within the area covered by Nagpur Grahmin Congress, and by a resolution passed in the first week of May, 1991, the work relating to Parliamentary election and its expenses was entrusted to Baburao Zade. It was not decided how much money should be expended on election propaganda, because the money was spent as was required, and there was no question of Baburao Zade consulting any one once the work was entrusted to him, and when a stock of the situation was taken, it was found that about Rs. 40,000/- were spent on newspaper advertisements and Rs. 50,000/- on printing work. Deotale could not say through what agency money was spent. Money was, however, collected in the form of collection coupons which were issued by All India Congress Committee, at the end of April 1991, those coupons being of the denominations of Rs. 2/- and Rs. 5/. No account was kept of these coupons. According to him, the posters were supplied by All India Congress Committee and Provincial Congress Committee, and they were not printed by Gramin Congress. According to him, Shakti Offset was one of the printers who did the printing, and it was done through Parshionikar. Parshionikar was not an office-bearer of Grahmin Congress. In his cross-examination, he stated that he could not attend to the administrative work of the organisation, as he was a sitting MLA at the time of the election. He could not say if Vasant Parshionikar was the General Secretary of Naenur Shaher Zilla Congress Committee and stated that he was not acquainted with him and had not even seen him.

55. According to the learned Counsel for the petitioners, it was unlikely that the work, which entailed such enormous expenditure would be done without even maintaining accounts. However, from Deotale's cross-examination it is clear that when the second respondent Banwarilal Purohit was a Congress candidate in the Parliamentary elections of 1984 and 1989, the Congress Committee had spent by collecting money on the basis of collection coupons and hand-bills and no record was kept in respect of those expenses also. He was emphatic that the Congress Committee never maintained any account in respect of expenditure of elections to the Local Bodies, Legislative Assembly or Parliamentary election, as also of the collection and he had no personal knowledge about the extent of expenditure.

56. Baliram Dakhane (P.W. 42), whose evidence was much on the same lines, stated that an account was kept of the money of the Grahmin Congress, only in respect of the subscription from the members. The account of election expenses was not maintained and there was a separate arrangement for that. He learnt from Baburao Zade that he had collected and spent the amount and Rs 40,000 were paid to Parshionikar who belonged to Shaher Congress Committee, for advertisements. The posters were issued from All India Congress Committee. The pass-book of the Grahmin Congress, which was produced, showed that after withdrawing an amount of Rs. 250 on 26-9-1990, the next withdrawal was of Rs. 3,500 on 10-4-1992, and whatever expenses were incurred by the Grahmin Congress Committee in respect of the election, were made from the collection, and no account was maintained of the receipts and expenditure. He also stated that the expenditure for the respondent No. 2's election, when he was a Congress candidate for the Lok Sabha in 1984 and 1989 was made from the collections and those expenses were in respect of advertisements, printing and other items.

57. Baburao Zade (P.W. 43) had been put in charge of the amounts collected for the election as well as the expenditure. According to him, coupons were received from All India Congress Committee through MLAs, MPs and Congress Committees, and he was not knowing of the value of the coupons received, they being in the denominations of Rs. 2 and Rs. 5. According to him also, an amount of

Rs. 40,000 was spent on advertisements through Parshionikar who was an office-bearer of the Nagar Congress Committee. Parshionikar did not give any receipt for the expenditure incurred, though he had paid him Rs. 40,000. His evidence purports to show that about 30,000 to 40,000 voter-cards were got printed through Shakti Offset Work and some hand-bills worth about Rs. 2,000 to Rs. 8,000, the total value being Rs. 50,000. The money was sent to Shakti Offset either through a peon or a clerk. The reason why no accounts were maintained and no questions asked with regard to the collection and expenditure is apparent from Zade's statement in cross-examination that the amounts on the basis of coupons and donations were paid mostly by businessmen in cash, with a request not to issue receipts.

58. Vishnudut Mishra (P.W. 44), who was the Vice President of Nagpur Nagar Zilla Congress Committee, also stated that moneys were collected through donations and collections, but he had nothing whatever to do with this. Gov Awari (P.W. 45), was the President of Nagpur Nagar Congress Committee in 1991 and had the dubious distinction of having 75 office-bearers of the Nagar Zilla Congress Committee with him, most of them not being even acquainted with him. Marotrao Kumbhalkar (P.W. 45) was the Treasurer and there were about 14 or 16 Secretaries, but Vasant Parshionikar was the secretary in charge of the election. According to him, when the responsibility was put on Parshionikar, it was done totally and he had no knowledge of the details of expenditure, and all the expenses incurred by the Congress Committee were incurred through Vasant Parshionikar. He stated that he had full trust in the person who had been given responsibilities, and he had not asked him for account. When Gov Awari first contested the Parliamentary election, he was 26 years old and had no ostensible source of income or wealth, and his experience is that workers, friends, well-wishes and partymen collect funds and incur the expenditure and they do it even on their own.

59. Marotrao Kumbhalkar (P.W. 46) stated that no amount of the Nagar Congress Committee was withdrawn from the bank for 1991 Parliamentary election and he, in his capacity as a treasurer and Parshionikar were placed in-charge of the election expenses and they spent whatever amount was collected, on the election expenses. According to him, about Rs. 14,00,000 were collected in the form of donations and coupons, the coupons being in the denominations of Rs. 2, 5, and 10. Nagar Congress Committee printed coupons worth about Rs. 7,00,000, and though he had kept an account of the number of coupons issued, that amount was not retained and was destroyed. Coupons worth Rs. 7,00,000 were received from the All India Congress Committee. The work of giving advertisement to the newspapers was given to Parshionikar and the advertisements were given to Prabhat Advertising, Nav Bharat, Creative Vision and anavad. Kumbhalkar's evidence showed that he was in-charge also of the election in the year 1989, when the respondent No. 2 Banwarilal Purohit contested as a Congress candidate and at that time also about rupees twelve to fourteen lacs were collected and spent in the same manner.

60. The learned Counsel for the petitioners urged that from the manner in which these witnesses gave evidence and the content of their evidence, it would be apparent that they were not telling the truth regarding the manner in which the collections were raised and the extent of collections, and it was unlikely that the Congress Committees, which collected such large amounts, would not maintain accounts, and after maintaining the accounts, would not preserve them and destroy them. However, all these witnesses are responsible office-bearers of the Congress and Deotale was a Member of the Legislative Assembly and Gov Awari, Member of the Parliament, having contested the elections on Congress tickets. It is obvious that the accounts were not maintained, because they were faced with the need to collect the amounts from traders and businessmen, and the traders, and the businessmen made their contributions on the assurance that no receipts would be issued. The learned Counsel for the petitioners further urged that receipts may not have been issued, but there was nothing to prevent the party from

maintaining accounts. The argument would have been plausible, but it appears from the evidence of these witnesses that the reality is that the responsible office-bearers who were once Legislators and Parliamentarians, wanted to connive at the manner in which the contributions were made because it was convenient for them to do so. Once the collections were made from the money which may not have been contributed from very clean funds, they had also to see that no accounts were kept of the amount so procured. However abhorrent it may be, this appeals to be the reality, and it is in the light of this position that the source of the payments for the printing of voter-cards and posters shall have to be considered.

61. Ashok Thakre (P.W. 54), the Manager of Shakti Offset Works, stated that none of the candidates approached him personally for placing orders. On behalf of Vilas Muttamwar who was a candidate for Lok Sabha from Chitnur Parliamentary Constituency, Ashok Dhavad had approached him, and on behalf of Shantaram Potdukhe, a Professor had approached him. Vasant Parshionikar approached for Dattu Meghe, respondent No. 1, in April 1991, and the orders were received about fifteen days before the day of the poll. Orders were placed by Parshionikar for posters of four sizes, as in Exhibits 75 to 78. His evidence also showed that Grahmin Congress got similar posters printed, and Baburao Zahde had approached on behalf of the Grahmin Congress for placing orders for posters, he being its Secretary. Vasant Parshionikar had approached on behalf of Nagar Zilla Shahar Congress, and for Dattu Meghe, printing work was done by Pande on behalf of Yuwak Congress. Binnu Pande, got 75000 posters printed. About 20,000 posters were of the size of 11"×18", 30,000 of the size of 18"×20" and 10,000 posters were of the size of 20"×30", and in addition, 10,000 folders were printed. On behalf of Nagpur Congress Committee, 75,000 voter-cards and 20,000 Congress party flags were got printed and 40,000 posters of the size of 15"×20" with photos of Rajiv Gandhi and Meghe were printed and all this work was done by Nagpur Shahar Congress Committee. For Nagpur Grahmin Congress, 4,00,000 voter-cards were printed, while 75,000 posters of the size of 20"×30" were printed for Nagpur Zilla Congress Committee (Yuwak). All this printed material, however, showed only one publisher, i.e., Nagpur Zilla Nagar Congress, because the change to the name of the other publisher would have cost them about Rs. 6,000 more, and the order from Nagpur Shahar Zilla Congress had been received first.

62. The learned Counsel for the petitioners urged that Thakre was not a witness of truth, because without any need, though payment of Rs. 50,000 had been received on a single day, separate receipts were issued for Rs. 10,000 on 13-5-1991—Exhibits 739 to 743, and an untenable explanation was given that this was done to get over the provisions of the Income Tax Act.

Whatever may be the reasons, it is apparent that at page 388 of the Ledger Exhibit 738/9, the amount Rs. 50,000 has been shown to have been credited by the President, Nagpur Shahar Congress Committee on 13-5-1991. Under five receipts dated 14-5-1991, each for Rs. 10,000 (Exhibits 744 to 748), a total amount of Rs. 50,000 was received from Nagpur Zilla Congress Committee, Grahmin Vibhag; an amount of Rs. 50,000 was received from Zilla Congress Committee (Yuwak) on 6-6-1991 under the receipts Exhibits 749 to 753, each of the receipts being for Rs. 10,000; and on 23-10-1991, under receipt Exhibit 754, an amount of Rs. 10,000 was received from Nagpur Zilla Congress (I) Committee (Grahmin).

63. The learned Counsel for the petitioners contended that the ledger had been tampered with because though the name of Prem Grover, son-in-law of the first respondent, was mentioned in the nominal index of the ledger, there was no account in his name, and though the account in the name of Anees Ahmed of Yuwak Congress appears at page 391 of the Ledger his name does not appear in the nominal index of the ledger, but it did not appear at that page. The account of Prem Grover should have appeared at page 391. Thakre admitted, after seeing the nominal index, that the account of Zilla Nagar Congress Committee, Nagpur, and Anees Ahmed appeared at that page. It is apparent that on 6-6-1991, receipt Nos. 4178 to 4182 had been issued to Nagpur Zilla Congress Committee (Yuwak), Nagpur, and that

receipt No. 4197 (Exhibit 756) was issued in the name of Anees Ahmed for Rs. 10,000. In the receipt book Exhibit 733/7, which is from 24-4-1991 to 26-4-1991, receipt No. 4143 dated 13-5-1991 is in respect of Rs. 5,000 in favour of the BJP. During the examination of Thakre, receipt No. 4197, which was issued in favour of Anees Ahmed, had not been questioned. Merely because there was a debit entry dated 31-3-1992 for Rs. 60,000 in the name of Yuwak Congress Committee and the debit entry of Rs. 68,000 in the name of Anees Ahmed on 31-3-1992, it would not follow that the account had not been properly maintained, and it had been manipulated for the convenience of the first respondent. All the bill books, which had been produced, are bound bill-books and no particular reason has been given why a large business concern, such as Shakti Offset Works, should have manipulated and falsified its own accounts. The only suggestion was that the bill dated 31-3-1992 for Rs. 68,000, which was issued to Anees Ahmed, was signed by Ragho Sharma, a partner of the firm, and Anees Ahmed was the friend of Ragho Sharma.

64. The learned Counsel for the petitioners pointed out that though the account of Nagpur Zilla Grahmin Congress appeared at page 389 of the ledger, the amount Rs. 10,000 was not posted as having been received on 23-10-1991, but was posted at page 398 in the name of the President, Nagpur Zilla Congress Committee (Yuwak). Thakre stated in his cross-examination that this amount, which was wrongly posted in the Khata of President, District Congress (I) Committee at page 398 of the ledger and was transferred to page 391 to the proper Khata, i.e., of Zilla Yuwak Congress Committee, and this was the amount received under receipt No. 4507 dated 23-10-1991—Exhibit 754. The attention of Thakre was drawn to the binding having become loose from page 389, and he explained that, that was because since the day before, about fifty persons had handled the ledger in the Court and the threads had come out from page 389 to page 420. It is not possible to say merely from this state of the binding of the ledger that all the pages from 389 to 420 might have been changed. There is assurance from the other bills and receipts, to which I have adverted, that there were transactions of Anees Ahmed and Yuwak Congress, even before and it cannot, therefore, be said unless those documents were challenged, and the explanation of Thakre was sought, that for the page which stood originally in the name of Prem Grover, the account of Yuwak Congress and Anees Ahmed came to be introduced. Besides the suggestions made to Thakre, there is no material on record to justify the inference that the payments made to Shakti Offset Works did not come from Shahar Congress, Grahmin Congress and Yuwak Congress, and that it was the first respondents funds which had been made available to these institutions and were used for doing the work of printing the voter cards and the posters. As I have already indicated above, there were large funds with the Shahar Congress and Grahmin Congress from which the payments could have been made, and the onus which lay heavily on the petitioners to show that the funds of the first respondent were utilised for the purpose, which has not been discharged.

65. There is one circumstance, which militates against the tampering of its own record by Shakti Offset Works, and it is that several persons who were candidates for the Lok Sabha-Election, viz., Vilas Muttamwar, Shantaram Potdukhe and the respondent No. 2 Banwari Lal Purohit had approached Shakti Offset Works for getting the printing work done in respect of their candidatures and according to Thakre, all this was done by their parties. Though, there are accounts in respect of the other candidates' candidature, they all related to political parties and not to individuals and none of the candidates personally got the printing done, nor did they take responsibility for payment.

66. In this context, the learned Counsel for the petitioners urged that the absence of delivery memos and the original bills and receipts would create a strong suspicion against the records maintained by Shakti Offset Works, but it is not possible to accept this submission in view of the material which has been referred to above. I, therefore, answer issue No. 5(b)(i) and (ii) in the negative.

67. Issue No. 5(b)(iii).—The petitioners' contention in para 2.15 of the petition is that large size cut-outs of different leaders were displayed at different places in the entire Constituency, between 25-4-1991 to 21-5-1991, and the places where these cutouts were exhibited have been mentioned in Annexure-II of the petition. They were prepared from plywood on wooden frames, and the expenditure on these cutouts was to the tune of Rs. 2,83,000. The number of places where they were displayed were not less than five hundred. This expenditure was not shown in the return of expenditure and it had been deliberately suppressed.

68. P.W.1—Bapat states that it was only during this election that cutouts were used, for the first time, and they were of Indira Gandhi, Rajiv Gandhi, first respondent and Sharad Pawar, and that they were exhibited on all important roads in all the Assembly segments of the Constituency. He obtained the information regarding the cost from the persons from whom his own party, i.e., the BJP, had got the cutouts made, and the estimate of the cost was Rs. 2,75,000. He admitted in his cross-examination that the respondent No. 2 Banwarilal Purohit had also put up cut-outs of the national leaders, such as Atal Bihari Vajpayee, Lalkrishna Advani and Murli Manohar Joshi. They had put up about 100 such cutouts, but the cost of putting up the cutouts had been met by the BJP. Ashok Wadibhastne, (P.W. 31), stated that each of the cutouts put up by the respondent No. 1 cost about Rs. 2000 to Rs. 2500 and named a few places where cutouts existed. According to him, the cut-outs of Atal Bihari Vajpayee, Advani and Murli Manohar Joshi were erected by the workers of the BJP and some by the party. He took P.W.1—Bapat around to show him the cut-outs. In respect of the cut-outs of its leaders which the BJP had put up, he had the bills and those bills were lodged with the party's treasurer. The bills were not produced. Shridhar Risaldar (P.W. 32) also spoke about the sizes of cutouts of Rajiv Gandhi, Sharad Pawar, Vasantrao Patil and Meghe and said that he had shown them to P.W.1—Bapat in the first or second week of June. According to him, each cut-out may have cost between Rs. 3000 and Rs. 20,000, but he could not say, who spend on them and on what dates the expenditure had been incurred. Suresh Deotale (P.W. 41) spoke about 10 to 12 cut-outs having been exhibited by Grahamin Congress in Kamptee sector, but some of the workers had offered to get them made and exhibited. Baburao Zade (P.W. 43) stated that the Congress Committee did not spend anything on these cut-outs and the expenses were borne by the workers. According to him, the cut-outs, which had been used in 1989 election were preserved and used in 1991. They were of Indira Gandhi and Rajiv Gandhi. Gev Awari (P.W. 45) stated that the workers had put up the cut-outs when he had contested the Legislative Assembly election, and it was his experience that workers, friends, well-wishers and partymen collected funds and incurred the expenditure, and that they do it even on their own, and the campaigning by means of advertisements and wall-paintings is done even without the candidate's knowledge. Marotrao Kumbhalkar (P.W. 46) also stated that the cut-outs of Rajiv Gandhi and Indira Gandhi used in 1989 election were preserved and used in 1991. According to him, in 1989, expenses had been incurred on cut-outs while Banwarilal Purohit was contesting as Congress candidate and in 1991 election, for Datta Meghe, without consulting them and without asking them whether expenses should be incurred. According to him also, friends, well-wishers, sympathisers and workers spend money on elections on their own, even without the knowledge of the candidates of the party concerned.

69. Girish Vyas (P.W. 47) spoke about his having seen the imposing cutouts which might have cost Rs. 8000 to Rs. 10,000. According to him, the BJP had also put up such cut-outs. He could not name the places where the cut-outs of Banwarilal Purohit, Murli Manohar Joshi and Vajpayee had been put up. Those cut-outs had been raised from the amounts collected by way of contributions on coupons and individual contributions. According to him, the BJP had authorised the heads of wards to incur the expenditure. Manohar Menjoge (P.W. 51) spoke on the same lines. According to the first respondent—Meghe (IRW1), cut-outs were used for propaganda during the election and they included those of Indira Gandhi, Rajiv Gandhi, Sharad Pawar and himself, and that was the position also when Banwarilal

Purohit was the Congress (I) candidate at the earlier Lok Sabha election. He stated that he did not bear any of the expenses for putting up the cut-outs, though when he had visited the villages, he saw cut-outs as well as wall-paintings relating to his candidature.

70. The learned counsel for the petitioners urged that though it was possible that the cut-outs used at the previous election may have been preserved and used at the present election, there was no reason for preparing Meghe's cut-outs during the previous elections, and the expenditure on them must have been incurred for this election. There is no positive evidence to show that the first respondent Meghe, either instructed the party workers or any of his friends, well-wishers or the painters to prepare the cut-outs and had ordered to bear the expenditure. It was for the petitioners to show that the expenditure on the cut-outs had been incurred or authorised by the first respondent, and there is no direct evidence on this point. No circumstances have been brought out in evidence to show, in the face of the material to the contrary, that friends, well-wishers, partymen and others collected funds and put up the cut-outs of the candidates and the party leaders, to show that the expenditure could be attributed only to the first respondent. In the absence of this evidence, it is not possible to hold that the first respondent incurred any expenditure on preparing and exhibiting the cut-outs and that the expenditure so incurred had been suppressed from his statement of account. I answer issue No. 5(b)(iii) in the negative.

71. Issue No. 5(b)(iv).—The petitioners' allegations in para 2.17 of the petition are that the respondent No. 1 had resorted to another mode of publication and/or advertisement, i.e., wall paintings at several places. These locations had been mentioned in Annexure-12.

72. First petitioner Bapat stated that he went around the Constituency and collected information during the election, and he had given these details to his Advocate when the petition was drafted. According to him, the expenditure on the wall-paintings was Rs. 88,000 to Rs. 90,000 throughout the Constituency. In his cross-examination, he stated that he collected the information about the wall-paintings mentioned in Annexure-12 before the elections were completed. Sanju Ganguli (P.W. 14) took the photographs of wall-paintings in the first week of June 1991 and produced 56 negatives and their prints at Exhibits 616 and 617. He did not maintain any record to show the exact places where the photographs were taken. Anil Lambade (P.W. 30), a BJP worker in charge of South Nagpur, showed 15 or 16 places where walls were painted for promoting the candidature of Datta Meghe and they were good quality wall-paintings in large numbers. With regard to the paintings for the candidature of the second respondent Banwarilal Purohit, he stated that they had been done mostly by the BJP workers who had raised collection by forming small units for meeting the cost. Ashok Savane (P.W. 37) took photographs of some of the wall paintings which have been produced at Exhibit 684. He used to work for Daily Hitavada and he could not tell the places from where the respective photographs were taken. Raju Hadap (P.W. 38) spoke about the existence of costly wall-paintings with glossy paint in four colours, costing Rs. 4.50 per sq. ft., having been done. According to him, he made enquiries with regard to these wall-paintings with a view to having similar wall-paintings for Banwarilal Purohit. He did not note down the names of the painters from whom the enquiries were made and who were said to have done the wall-paintings for Datta Meghe. None of those painters have been examined to show that they had been employed by Datta Meghe for these paintings. Suresh Deotale (P.W. 41), as already stated, speaks about the workers of the party bearing the expenses on the wall-paintings. Prakash Badiye (P.W. 53) says that he showed the wall-paintings regarding Datta Meghe to P.W.1—Bapat, but from his evidence also it is apparent that it is usually the party workers who bear the expenses on the wall-paintings from their collections. He spoke about some bills having been sent to the BJP, but none of them were got produced. The first respondent Meghe denied that he had incurred any expenditure on these wall-paintings and spoke about the practice that it is the party workers who get this work done.

73. The whole of the evidence, to which I have referred above, falls short of showing that it was the first respondent who had incurred the expenditure or authorised it. The learn-

ed Counsel for the petitioners urged that there was no good rapport between the first respondent and the Congress Party and it was unlikely that the Congress Party workers might have borne the expenditure for his election. It is not possible to infer that there was no good rapport between the first respondent and his party, though it is quite possible that the relations between him and the other workers of the party on personal level may not have been very friendly. In the absence of positive evidence to show that he was the person who parted with his own money for bearing the expenditure on wall paintings, or that he authorised expenditure by others on the wall-paintings, it is not possible to hold that the first respondent spent about Rs. 88,500 on the wall-paintings and that he suppressed this expenditure from his statement of expenses filed before the District Election Officer. I answer issue No. 5(b)(iv) in the negative.

74. Issue No. 5(b)(v).—The allegations in para 2.20 of the petition are to the effect that the printed inland letters, each costing 0.75 paise and requiring 0.25 paise on printing, had been sent to 12,40,830 voters of the Constituency, entailing an expenditure of Rs. 12,40,830.00, and this expenditure had not been shown in the return of expenses filed by the first respondent with the District Election Officer. At the foot of the letter, it is mentioned that it was issued with the courtesy of Sarva Dharma Sambhav Samajik Sanghatna. The first respondent Meghe admits in his evidence his residential address being the same as mentioned at the top of the letter, i.e., Pande Layout, Khamla Road, Nagpur, but he denied that he either got these letters printed or sent them to the voters. Substance of the letter is that the first respondent wanted to approach each voter individually, that the voters were acquainted with his services in the social, political and educational fields; the need to have a stable Government; the events which led to assassination of Rajiv Gandhi and the defection of those who swore by their loyalties to Indira Gandhi and Rajiv Gandhi. The letter refers to the agitation at Ayoudhya and exhorts the voter to vote for Congress Party for a stable Government.

75. In reply to para 2.20 of the petition, there was no express denial about the first respondent having signed the letter, and the denial was about sending the letters. By an amendment to the written-statement, the word "sent" was substituted by the word "signed", and the reason given for the mistake was that there was an inadvertant omission by the Advocate. The position, now, is that there is a denial both about the signing and sending of the letters by the first respondent to the voters and his bearing the expenses of sending the letters. The first respondent contends that the letters had been sent by an organisation Sarva Dharma Sambhav Samajik Sanghatna which is a politically motivated organisation, and that organisation was sympathetic to the Congress(I) Party. The workers of that organisation decided to support the candidature of the first respondent, and according to the information he received, they got 2000 letters printed similar to those at Annexures 13 and 14, i.e., Exhibits 79 and 80. His approval, however, was not taken for the said publication, and the entire expenditure was borne by the said Sanghatna.

76. Though the name of Sarva Dharma Sambhav Samajik Sanghatna appeared on the foot of the printed letter, the name of the printer and publisher did not appear on it, and grievance of the petitioners was that they could not know where the letters had been printed and published and who were the individuals who had printed and published them. Bapat (P.W. 1) stated that each one of the voters had received such a letter. He admitted in his cross-examination that he had no idea if inland letters Exhibits 79 and 80 had not been signed by the first respondent and if some one had issued the letters in his name. The petitioners examined Shri Jayant Dinkar Kotwal (P.W. 56), a handwriting expert, to identify the signatures on Exhibits 79 and 80 with the admitted signatures of the first respondent, but he stated that no opinion could be expressed regarding the authorship or otherwise of the disputed signatures at Exhibits 79 and 80 with the standard signatures which were produced at Exhibits 734, 735 and 827. There is no direct evidence to show that the first respondent had signed these letters, and the printed signature which appeared on the letters Exhibits 79 and 80 were his.

77. The learned Counsel for the petitioners urged that it was not important to show that these letters were, in fact, signed by the first respondent, and the onus, which lay on him, was to show that the expenses incurred on sending these letters were incurred by the first respondent. It was, for the

first time, in his cross-examination that the first respondent Meghe stated that Sharad Bhasme was one of the office-bearers of the Sanghatna and that he knew him and that he saw Exhibits 79 and 80, for the first time, after the election petition was filed. It was then that he made enquiries with Sharad Bhasme about these letters and he told him that they were in support of his candidature and so he did not think it necessary to tell him about the letters. Sharad Bhasme also told him that about 2000 such letters had been sent and this was in answer to his question regarding the details. In para 58 of his cross-examination, first respondent Meghe stated that Sharad Bhasme had told him that he had issued these appeals, and that he was mentioning the name of Sharad Bhasme in order to show that he was not concerned with it and that he had not spent for it. He could not say if only 200 copies had been printed and not 1000s of copies. P.W. 1-Bapat stated that Vijay Shende and Vinayak Gode, who were EJP Party workers, had handed over Exhibits 79 and 80 to him in the party office, and that is also the burden of the evidence of P.W. 49 Vinayak Ramji Godde. The other witnesses, who speak about having received similar letters and had seen them being received by others are P.W. 47-Girish Vyas, P.W. 51-Manohar Manjoge, P.W. 53-Prakash Badiye and others, viz., P.W.s. 16 to 26.

78. Fetterer Bapat's evidence shows that he made enquiries regarding the organisations, including Sarva Dharm Sambhau Sanghatna, which had ostensibly issued the advertisements in newspapers, and he found that none of these organisations were registered with the Charity Commissioner. He tried to trace the other organisations, but none could be located and he could not get any information about the office premises, in spite of his efforts. His enquiries with the news papers offices about them also were infructuous.

79. The learned Advocate General urged that inspection of the records maintained by the Charity Commissioner could not have been the only means of getting the requisite information, and though the written-statement did not disclose the identity of Sharad Bhasme as acting for Sarva Dharma Sambhau Sanghatna, it was clear from the evidence of Ashok Jain (P.W. 4) who was examined on 27th March, 1992 that the advertisement published in the issue of Lokmat dated 9th June, 1991 had been given by members of Sarva Dharma Sambhau Sanghatna and that Sharad Bhasme had given this advertisement and had made the payments. He stated that the Code number for Sarva Dharma Sambhau Sanghatna was 99J 460/31 and Sharad Bhasme used to operate that account and he made all the payments and the balance was cleared. However, there is nothing in his evidence to indicate the whereabouts of Sharad Bhasme. Kalyan Ayyer (P.W. 5), who was examined on 31st March, 1992, spoke about an insertion in the Kashtra doot dated 27th May, 1991 (Exhibit 86/16), pursuant to the telephonic instructions from Sharad Bhasme and, according to him, an entry about it was made in the Schedule Register by one of the employees Jyoti, but the name of Sarva Dharma Samabha Sanghatna appeared in the handwriting of Shrivastav written subsequently. The payment for this advertisement had not been received, in spite of the telephonic messages given to Sharad Bhasme. Curiously enough, Kalyan Ayyer states that he did not know the telephonic number and was not personally aware of the address of this organisation. The telephonic message for the insertion was received by the person who made the entries in the Schedule Register, but the Schedule Register did not mention the name of the person placing the order and it was not mentioned either in the advertisement or in the bill or any record maintained by them. Gov Awari (P.W. 45) stated that he knew Sharad Bhasme and Balasaheb Dethe, but this mention would not suggest the connection which Sharad Bhasme had with Sarva Dharma Sambhau Sanghatna. Anant Shastri (P.W. 5) refers in para-17 of his deposition to the advertisement dated 21st May, 1991 and the bill Exhibit 465 in respect of the release order dated 28-5-1991 which was placed by Sharad Bhasme. He had already issued the release order, but the payment was not made by Sharad Bhasme, and the space that had already been booked pursuant to that release order was utilised by Nagpur Shahar Zilla Congress Committee, on whose behalf Vasont Parshionikar had offered to utilise the space. No other witness mentions the name of Sharad Bhasme and his connection with Sarva Dharma Sambhav Sanghatna.

80. The learned Advocate General urged that it should have been possible for the petitioners to examine Sharad Bhasme on the basis of whatever has been stated by these four witnesses, but as I have already pointed out, the petitioners could not have had any notice of the responsibility or the

relationship which Sharad Bhasme could have had with Sarva Dharma Sambhav Sanghatna. After the petitioners had closed their case, it was only on the basis of the statement which came from the first respondent that the nexus between Sharad Bhasme and Sarva Dharma Sambhav Sanghatna could have become apparent. It is noteworthy that Sharad Bhasme was cited as a witness by the first respondent, but had not been examined.

81. In para 117 of Razikram's case (AIR 1975 SC 667), after pointing out that the principle underlying section 106 of the Indian Evidence Act which is an exception to the general rule governing burden of proof, applies only to such matters of defence which are supposed to be especially within the knowledge of the defendant respondent; that even if the nature of the trial of an election petition is not the same in all respects as that of a criminal trial, the burden of proving each and every ingredient of the charge in an election petition remains on the petitioner. If a fact constituting or relevant to such an ingredient is pre-eminently within the knowledge of the respondent it may affect the quantum of its proof but does not relieve the petitioner of the primary burden. The petitioner must adduce *prima facie* proof even of such a fact. That is to say he must establish such other relevant facts and circumstances which if unrebutted or left unexplained by the opposite party would raise a presumption as to the existence of such fact in issue. In that case, there was no evidence from which the inference as to the free carriage of voters could be raised. It is obvious that the burden of discharging of the ingredients of the charge of corrupt practice is on the petitioners, and only because Sharad Bhasme, was cited as a witness by the first respondent and had not been examined by him the petitioners would not be relieved of that obligation.

82. The question would be whether sufficient foundation had been laid by the petitioners for raising the inference that the cost of printing the letters Exhibits 79 and 80 had been borne by the first respondent. The learned Counsel for the petitioners urged that the intrinsic evidence of the documents themselves would show that the letter emanated from the first respondent that it mentioned his own residential address, that it contained an appeal to vote for him and he sought the good wishes of all the voters and the blessings of the elders and amounted to an exhortation to them to vote for him. The learned Advocate General, on the other hand, urged that if the friends and well-wishers of the first respondent were to have thought of making an appeal like the one which appeared in Exhibits 79 and 80, it was not unlikely that it would also have been couched in the same words, and merely because of the form and the nature in which the appeal has been made, it could not be inferred that the appeal must have come from the first respondent personally and at his expense.

83. In this context, it is necessary to consider what would be the position of the first respondent, once he had entered the witness-box, granting that the burden of proof in election petition for proving corrupt practice would be the same as the burden on the prosecution to prove the offence against the accused beyond reasonable doubt. Even under section 315 of the Code of Criminal Procedure, which regards an accused person to be competent witness for the defence and permits him to give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial; the sworn evidence of an accused is evidence for all purposes like the evidence of any other witness and is, therefore regarded as evidence against the co-accused also.

84. The submission of the Learned Advocate General was that it would be necessary to look into the evidence of the first respondent, only if the charge of corrupt practice is established against him, and it would be impermissible for the Court to look into his evidence before the charge is proved. This argument, however, overlooks the clear position that the sworn evidence of an accused is evidence for all purposes and it cannot be confined only for considering whether by preponderance of probabilities the defence version is established. It is apparent that according to the written statement of the first respondent, the letters in question had been sent by Shiva Dharma Sambhav Sanghatna, and 2000 letters similar

to Annexures 13 and 14 had been sent without the approval and consent of the first respondent. It is obvious that the admission, which is attributed to the first respondent in his evidence would be about the enquiries made with Sharad Bhasme and the statement of Sharad Bhasme that they were printed by Sarva Dharma Sambhav Sanghatna. The first respondent stated in para-45 of his evidence that after he filed his nomination on 23-4-1991, there were five to seven meetings at which Suresh Dcota, Gev Aswari, Satish Chaturvedi and others used to be present for planning the strategy. At these meetings, apart from the office-bearers of the Congress, his associates such as Sudhakar Nimbalkar and Sharad Bhasme used to be present.

85. With regard to the contention that though Sharad Bhasme could have been examined by the petitioners, he has not been examined by them, it is clear from what has been observed above that the petitioners could not have had any inkling about the connection of Sharad Bhasme with the printed letters, such as Exhibits 79 and 80, and even the references which came to be made in the evidence of the four witnesses could not have put them on notice about the facts on which Sharad Bhasme could have given evidence, except the newspaper-advertisements in which he was shown to be the person giving the advertisements. It was urged on behalf of the first respondent that though the Head Postmaster, General, Post Office, Nagpur, had been summoned to come with the record for giving evidence, he was not examined to show that there were bulk purchases on behalf of the first respondent of the inland-letters from the post offices. The learned Counsel for the petitioners submitted that the evidence of this witness could not have been useful to the petitioners, because the name of the person who had placed the order and purchased the inland-letters in bulk did not appear in the record of the post office.

86. All that we are left with on record are merely the inland-letters which are in the nature of personal appeal by the first respondent, without there being evidence to show that he had spent on purchasing the inland-letters and printing the contents, as they appear at Exhibits 79 and 80 and that he got them posted to all the voters of the Constituency. The nature of the appeal, which appears in Exhibits 79 to 80, at the most raised a very strong suspicion against the first respondent that it must have been at his instance and at his behest, because Sharad Bhasme was a person concerned with the election strategy. It was for the petitioners to establish by cogent and trustworthy evidence that the expenses of sending the inland-letters had been incurred by the first respondent. As observed by E. S. Venkataramah, J., as he then was, in Shivaputtrappa Shivabasappa, v. Sanganagouda Basangouda (Vol. A1IX Election Law Reports 84, at page 105), the position of the petitioner in an election petition is not that of an accused in a criminal case and it is not open to a petitioner in an election petition to raise some point which is likely to leave some doubt and to claim the benefit of it and on that basis seek a declaration that the election is void. In fact, the position of the petitioner in an election petition is equivalent to that of a prosecutor in a criminal case. In the absence of evidence to show that the first respondent had spent on purchase of inland letters and printing the contents these the circumstances cannot raise, but a strong suspicion against him but that cannot take place of proof, and I answer issue No. 5(b)(i) in the negative.

87. Issue No. 7.—The contentions with regard to the wrong acceptance of the nomination papers of the respondent No. 3 appear in paras 4.1 to para 4.5 of the petition, the substance being that respondent No. 3, who filed his nomination papers, had mentioned that he had been set up by the Republican Party of India (Khobragade) (RPI (K) for short) and has given his preference for the symbol (Railway Engine) which had been a symbol reserved for the RPI (K). The respondent No. 3 represented that though he was set up by the RPI(K), he was supported by National Front, Communist Party of India, Communist Party of India (Marxist), Janata Dal, etc., and induced the electorate to vote for him. This was in spite of the fact that the support to him of RPI (K) was not permitted by the Election Commission of India by the wireless message dated 26th April, 1991, addressed to the Returning Officer. The declaration given by the respondent No. 3 that he was set up by RPI(K) was palpably false, because Professor Ashok Gadgule who was said to have issued the certificate that the respondent No. 3 was an official candidate of RPI(K), had no authority to nominate the

official candidate, and since about 81,318 valid votes, which were cast for him, were wasted because a considerable portion, i.e., 80,000 votes, of those valid votes would have gone to the respondent No. 2, the improper acceptance of his nominal paper had materially affected the result of the election.

88. The first petitioner Bapat stated that the authorisation for RPI(K) candidate could be given only by Advocate P.S. Tirpude who was the Additional General Secretary of the party. Jain was the President of that party and he should have given the authorisation, but the authorisation was given by Prof. Ashok Godghe, the former General Secretary of that party, whose authority had been taken away. According to him, the Chief Election Commission had issued instructions on 26-4-1991 that the authorisation of RPI(K) candidate should be in the name of P.S. Tirpude, and that message had been received by the Returning Officer on 28-4-1991.

28-07-1992 :

89. From the evidence of the Returning Officer Shri Gurumurti Bedge (47 RW1), it is apparent that the notification regarding the election was issued on 19-4-1991 and the nominations were to be received by 26-4-1991. The nomination papers were to be scrutinised on 27-4-1991. The withdrawals were to be made by 3.00 p.m., on 29-4-1991. The respondent No. 8 Iqbal Ahmads nomination papers appear at Exhibit 704 (collectively). They were filed on 24-4-1991. He gave his preference for the symbols Railway Engine, Two Leaves and Rising Sun—in that order. Obviously, when the nomination papers were scrutinised, the enquiry had to be directed to finding out whether they were valid or invalid, and even Bapat (P.W.1) did not make a grievance about this position and about the validity of the nomination papers of Iqbal Ahmed, at that stage. At the time of the scrutiny of the nomination papers the question of sponsorship of the candidate by political party is not taken into account because the party had liberty to sponsor its candidate upto 3 p.m. of the last day for withdrawal. Shri Bedge's evidence shows that he did not have before him any documents, except Form Nos. A and B, regarding Iqbal Ahmed. None of the 34 candidates, who were present at the time of the scrutiny of the nomination papers and the allotment of symbols, objected to the validity of the nomination papers or the allotment of symbol to Iqbal Ahmed. 'Railway Engine' was a free symbol, and since it had not been claimed by any other candidate and Iqbal Ahmed had given his first preference for that symbol in the first nomination paper, no exception can be taken either to the acceptance of Iqbal Ahmed's nomination paper or the allotment of the symbol 'Railway Engine' to him.

90. It is apparent that the communication from the Election Commission of India had not been received before the scrutiny of the nomination papers and the allotment of symbols, but much later. Even the learned Counsel for the petitioner was not in a position to point out how, in these circumstances, it could not be said that the nomination papers of Iqbal Ahmad were invalid and the allotment of the free symbol 'Railway Engine' to him, improper. The receipt of the wireless message dated 26-4-1991, after the entire procedure had been gone into by Shri Bedge, would not affect the validity of the acts of the Returning Officer. Issue No. 7 is, therefore, answered in the negative.

91. Issue No. 8.—There is no evidence on record to show that the respondent No. 3, by representing himself to be the official candidate of RPI(K), had made a false representation. Though it was stated that it was Tirpude who was entitled to nominate the official candidate, the evidence on record is not conclusive in this respect. The evidence does not go to establish that by the respondent No. 3's representation that he was the official candidate of RPI(K), the result of the election of the first respondent had been materially affected. Issue No. 8 is, therefore, answered in the negative.

92. Issue No. 9.—The petitioners' contentions in respect of this issue are contained in para 3.1 of the petition, and they purport to show that on 19th June, 1991, after the result of the election was declared on 17th June, 1991, a meeting of the workers of the BJP was held in Shishu Vihar, near Lumbia Tank, Nagpur and during discussions, it transpired that there were reasons to believe that large scale rigging in the ballot papers took place in the course of election. Though the original ballot papers were uniformly printed on white paper, spurious ballot papers, off-white in colour, bearing marking in

favour of respondent No. 1 and dissimilar in size and thickness were found. These ballot papers appeared to have been uniformly stamped as if a mechanical device had been used for the purpose. At the time of the counting complaints were made to the Counting Supervisors, Assistant Returning Officer and the Returning Officer, but no action was taken. This position has been denied by the first respondent and the respondent No. 47.

9. P.W. 1 Bapat, who was also a counting agent of the second respondent on table No. 14 stated in para-9 of his examination-in-chief that the counting was segmentwise and boothwise, and he noticed that some of the ballot papers were not clear white but were off-white, and when he felt the paper, he found that its texture and thickness were different from the other ballot papers. Stamp-marks on those ballot papers appeared at particular spot. As he was moving, during the counting, from table to table, he saw the ballot papers on the other tables and he made a written complaint to the Assistant Returning Officer Shiwapurkar, but he was told that he would inform him after the Returning Officer arrived and also that there was no substance in his complaint. He did not retain a copy of the complaint. According to him, the other counting agents also had made similar complaints. In the meeting, which was held at Shishu Vihar on 19-6-1991, it was found that the other counting agents had also noticed the differences in the colour of the ballot papers, their sizes and thickness and so a complaint was made by Prabhakar Datke, the election agent of the respondent No. 2, to the Returning Officer. Several other counting agents were examined as witnesses, and they include Chandrashekhar Dorlikar (P.W. 15), who stated that he also noticed similar differences in the ballot papers, and though he had told the counting officer on his table and Prabhakarrao Datke, no complaint in writing had been made, even until the completion of the last round of counting. This is also the burden of the evidence of Baburao Kakrekar (P.W. 16), Subhash Aprajit (P.W. 17), Ramesh Dalat (P.W. 18), Balu Bante (P.W. 19), Sudhakar Joshi (P.W. 20), Shriram Deshpande (P.W. 21), Dr. Subhash Raut (P.W. 22), Sheshrao Hedao (P.W. 23), Sardarilal Soni (P.W. 24), Dr. Vijaykumar Agrawal (P.W. 25), Gajanan Tamhane (P.W. 26) and Ashok Wadibhasme (P.W. 31). Balu Bante (P.W. 19) mentioned that there was a discussion between him and the counting officer, but he made no complaint in writing, and that he was not allowed to handle the ballot papers. Ramesh Dalat (P.W. 18) stated that though he informed the Assistant Returning Officer about the differences, the Assistant Returning Officer was in no mood to hear the complaints, and he made a complaint only to the party workers. Sudhakar Joshi (P.W. 20), who was a counting agent for Shiv Sena, also stated that the staff was in no mood to listen. Dr. Subhash Raut (P.W. 22) felt that the colour could change at the time of printing but he had informed Prabhakar Datke about it. Gajanan Tamhane (P.W. 26) speaks about his having made a complaint to the Returning Officer Shri Bedge, but his written complaint was not accepted. He did not retain a copy of the complaint and his complaint had been torn and thrown away. Ashok Wadibhasme (P.W. 31) spoke about having made a complaint to Assistant Returning Officer Girralwar, but later admitted that, this may not have been the name of that Assistant Returning Officer. Shri Bedge (47 RW1) stated that he had not received any such complaints and there were no differences in the ballot papers which were counted.

94. It must be noted that P.W.1—Bapat was an important office-bearer of the organisation, and it was unlikely that he would have allowed the matter to rest there if such serious dissimilarities in the ballot-papers were to have been noticed, and would have desisted from making a complaint in writing at the time of counting. The other witnesses, who were examined by the petitioners, stated that they did not notice the absence on ballot papers of either the distinguishing mark or the signature of the Presiding Officer. None of these witnesses noted down the numbers of the ballot papers which they found to be suspicious. It was not until the meeting was held on 19-6-1991 that the petitioners and the respondent No. 2 thought of taking any action for the alleged differences. The meeting was held on 19-6-1991 to take stock of the situation and to find out why the respondent No. 2 had lost the election. It is noteworthy that Datke, who was the election agent of the respondent No. 2, was present at the time of the counting, but Bapat's evidence shows that he did not ask Datke to make a written complaint about the

spurious ballot papers, though he realised that the Assistant Returning Officer Bhiwarpurkar was avoiding to take action on his own complaint. What is curious is that he was satisfied with the explanation of Bhiwarpurkar that the differences in the ballot papers could be due to the differences in the paper used for the ballot papers and that he believed him. He could not give any reason why he did not ask the senior party workers to make a complaint, or why he did not make a complaint to the superior of the Assistant Returning Officer, i.e., to the Returning Officer. Even at the meeting dated 19-6-1991, no decision was taken about the steps to be taken about the complaint regarding spurious ballot papers. Bapat admits that the reference to the suspicious ballot papers came to be made, for the first time, in the petition. Considering the omission by the senior party workers, who were present at the time of the counting, to raise timely objections and to follow-up those objections by filing written complaints to the Returning Officer and the silence on this point until filing of the present petition, I find it difficult to accept the version of all these witnesses that there were spurious ballot papers of off-white colour, varying in thickness and size from the ballot papers which were of white colour.

95. The second ground, which has been urged on behalf of the petitioners, for asking for inspection of ballot papers and for recount, is that the ballot boxes were not properly sealed and there was no proper security arrangement with regard to the ballot boxes.

96. Bedge's evidence shows that he had sent a letter on 30-5-1991 to all the candidates about the security arrangement for the ballot boxes, the places where they would be collected and the place where they would be kept until the counting, and intimated them that they could post their representatives at the places named. He obtained acknowledgements from the candidates (Exhibits 771 and 772). Similar intimations had also been given to all recognised political parties and their acknowledgements obtained (Exhibit 773). According to him, all the ballot boxes, which were collected at different centres were brought and kept in the sheds in the APMC Market Area. Those rooms had been sealed in his presence and the charge of the ballot boxes was handed over to the Security Personnel on 13-6-1991. The rooms came to be opened only on 16-6-1991, immediately before the counting, and the signatures of the candidates or the representatives who were present, were obtained on the log-book, P. V. Datke, the election agent of the respondent No. 2, signed on the four log-books, at the time of opening the rooms, in his presence. The candidates had been informed by the letter dated 8-6-1991 (Exhibit 778) of the details of the arrangement for counting at Kalambna Market place and their acknowledgements obtained—Exhibit 779.

97. The learned Counsel for the petitioners urged that the ballot boxes had not been kept in a strong room. The evidence of Shri Bedge shows the security measures which he had taken and it was apparent that he had not only his word in support of those arrangements. Though the log-book was to be used only for opening the room and not for mentioning the security, his officers had drawn up a writing about the safety measures taken as contained in the memoranda dated 12-6-1991 and 13-6-1991 (Exh. 825). Exhibit 825 mentions that all the rooms, in which the ballot boxes were to be kept, were inspected on 12-6-1991 and all the windows were secured by fixing iron-jalees and iron-bars and the rear door was also secured by putting two strips and sealing them, and only one shutter was left open with a view to closing it and being sealed and that all the police guards who were present were informed of the security measures taken. It is difficult to see what more could have been done by the Returning Officer, with a view to ensuring the safety of the ballot boxes, where they were kept pending counting. The intimations were sent to all the persons concerned and the very fact, that P. V. Datke, the election agent of the respondent No. 2, had subscribed his signature to one of the documents relating to the safety measure, should be sufficient to dispel any suspicion about adequate security measures not having been taken. Besides making idle suggestions to Shri Bedge, no material was placed on record to show that such circumstances existed which could legitimately raise a doubt about the possibility of tampering the ballot papers and the ballot boxes from the moment they were received from the polling stations until they were taken out of counting on 16-6-1991.

98. The next submission of the learned Counsel for the petitioners was that the account, which was kept in form No. 16, had not been signed by the Presiding Officers, and there was a mistake in sending the figures immediately after the poll, to the State Government. Shri Bedge's evidence shows that steps had been taken to instruct the Presiding and Polling Officers for enabling them to perform their duties in accordance with the rules and the instructions of the Election Commission. He stated that he did not receive any complaint about the polling agents not being supplied the copies of form No. 16 by any polling station. He was shown one of the forms—Exhibit 788—relating to the polling Station No. 11, Guard Line, Nagpur, which did not bear the signature of the Presiding Officer, but it is apparent that Part-II of that form had the signature of the counting supervisor and the Additional Returning Officer, which had to be made at the time of counting. Part-I of form 16 contains the account of the ballot papers which has to be maintained by the Presiding Officer of a Polling Station, while Part-II thereof, which is on the reverse, has to be utilised by the counting supervisor and the Assistant Returning Officer, at the time of counting. Since there was no complaint that the ballot boxes from this Polling Station had not been properly sealed and that the seals were not intact when the boxes were opened, at the time of counting, nothing turns on the failure of the presiding officer to sign on Part-I of form 16. An objection was raised also about the failure of the one of the presiding officers to furnish a copy of the account in form-16, when demanded, and the written endorsement by the presiding officer that copy could not be supplied to him. When this was shown to Bedge, he stated that all that he could say in this respect was that the instructions were not properly understood by the presiding officer who made that order.

99. Shri K. H. Deshpande, learned Counsel for the petitioners, stated that there were many instances where the account in form-16 has not been properly kept and that he could not inspect the documents during the trial and he was, therefore, asked to take the inspection of the documents which had been produced by the Returning Officer, for showing that the accounts in form-16 had not been properly kept. It is noteworthy that these are the documents of which certified copies could have been obtained for pleading properly the circumstances on the basis of which, inspection of ballot papers could have been sought. All that the learned Counsel could state is that after his inspection of form-16 of about 270 polling stations, he found that there was a difference of 1,200 to 1,300 ballot papers in the account. Considering the large margin of difference in the number of votes secured by the first and the second respondents, this figure cannot be said to be consequential. The learned Counsel, however, pointed out that there was a discrepancy in the break-up of the figure given about the male and female voters in the report. The learned Counsel relied on pleading in para-3.6 of the petition to the effect that the Divisional Publicity Office of the State Government had issued a press-note on 13th June, 1991, giving the information regarding the break-up of the male and female votes and the percentage, the total number of votes cast being 6,11,558 out of which, 3,49,809 were male voters and 2,61,749 were female voters, and these figures had been published in the issue of the local newspapers, including Hitavada dated 14th June, 1991. On the other hand, the figures given in form-20 were different and there was a difference of 9,673 votes in the total number of votes polled, and such a large discrepancy in the number of

votes polled was indicative of large scale of rigging.

100. The Returning Officer stated on this that he had issued show-cause notices to the Presiding Officers and Counting Supervisors for their lapses in maintaining the accounts of ballot-papers, and he warned the Assistant Returning Officers and Presiding Officers for the mistakes which were committed in giving the poll figures, on the basis of which, a telephonic message was sent to the Government about the break-up the male and female voters, on the day following the poll. He also admitted that on 6th July, 1991, the Assistant Returning Officer had sent notices to various persons for not supplying the statistical data resulting in wrong information being furnished to the Government and that included discrepancies in part-I of form No. 16. He admitted further that there can be a discrepancy between the number of ballot papers found in the ballot-box and that mentioned

in the account in part-I of form No. 16, if the letter is not correctly filled in, and the account in part-I of form No. 16 shown to the counting agents as soon as the ballot-boxes are opened for counting. The number of ballot papers found in the box tallied with this account. Bedge's evidence shows that he did not receive any complaint about the discrepancy in part-I of form No. 16 at the time of counting.

101. In this context, reference may be made to para-21 of the written-statement of the respondent No. 47, the Returning Officer, denying that the difference was indicative of large scale rigging. According to him, the statements of percentage of poll were given by the Presiding Officers to the Assistant Returning Officers, alongwith the sealed ballot-boxes and other material, and the figures of the percentage of poll was compiled at the level of Assistant Returning Officers late in the night of 12th June, 1991, on arrival of the polling parties, and the discrepancy may have occurred because of a mistake of totalling at the level of the Assistant Returning Officers. Subsequently, this discrepancy was corrected and the revised statement was prepared and submitted to the Chief Electoral Officer and it was made available on the Notice Board of respondent No. 47 for the candidates and interested persons. The compilation of figures of poll was an administrative action and was not a legal step and there was no violation of any legal provision.

102. It is obvious from the pleadings as well as the material on record that the break-up of the male and female voters had to be furnished immediately on the day following the poll. What is material in an election petition is not what were the figures supplied on the day after the poll but the account of the ballot papers which was maintained in Part-II of form No. 16 and subsequently in form No. 20. If there were to be a discrepancy in the figures given in Parts-I and II of form No. 16 and Form No. 20, possibly an argument could have been advanced that the discrepancy in the account was indicative of the poll being unfair. There is no pleading in the petition regarding the discrepancies in parts-I & II of form 16 and form No. 20. As is evident from the statement, the certified copies of form No. 20 could have been obtained and a proper basis for inspection of the ballot-papers could have been laid. This has not been done, and it is not, therefore, possible to entertain the submission that there was rigging of ballot papers, relying only on the figures which were submitted on telephone by the Returning Officer about the male and female voters on the day following the poll.

103. The petitioners filed an application for inspection of ballot papers on 27th November, 1991. The same grounds as in the petition were raised and it is not necessary to deal with these grounds over again.

In Baliram Bhalaik, v. Jai Biharilal Khachi (AIR 1975 Supreme Court 283), it has been pointed out that since an order for a recount touches upon the secrecy of the ballot, it should not be made lightly or as a matter of course. Although no cast iron rule of universal application can be or has been laid down, yet, from a beadroll of the decisions of this Court, two broad guidelines are discernible: that the Court would be justified in ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is *prima facie* satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

In Chanda Singh, v. Ch. Shiv Ram Varma (AIR 1975 Supreme Court 403), it was observed :

"Victory by a very few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. If the counting of the ballots are interfered with by too frequent and slippant recounts by courts, a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious

prying if recount of votes is made easy. The best surmise, if it be nothing more than surmise cannot and should not induce the judge to break open ballot boxes. If the lead is relatively little and/or other legal infirmities or factual flaws hover around, recount is proper, not otherwise."

In Bhabhi v. Sheo Govind (AIR 1975 Supreme Court 2117), it was pointed out that the allegations made against the elected candidate must be clear and specific and must be supported by adequate statement of material facts, before inspection is allowed; and the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties. The discretion is not to be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void.

As observed in P.K.K. Shamsuddin, v. K.A.M. Mappillai Mohindeen (AIR 1989 Supreme Court 640), unless the affected candidate is able to allege and substantiate by means of evidence that a *prima facie* case of a high degree of probability existed for the recount of votes, a Tribunal or Court should not order the recount. This position is reiterated in N. Narayanan, v. Semmalai (AIR 1980 Supreme Court 206).

In D. P. Sharma, v. Commissioner and Returning Officer [1984 (Supp) Supreme Court Cases 157], it was laid down that in order to obtain recount of votes, a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. Such a case has not been made out here, and I find that the petitioners are neither entitled to inspection of the ballot papers nor to a recount. The application Exhibit 28 is, therefore, rejected.

104. Issue Nos. 5(vi) & (vii) and 6(a)(b)&(c) —The learned Advocate General urged that the petitioners have not pleaded material facts and given the requisite particulars in respect of the expenditure incurred on the various advertisements which have been included in Annexures 15, 17, 18 and 18-A to 18-D of the petition. After the order was passed on Exhibits 16 and 17 on the preliminary objections, on 28th and 29th October, 1991, the first respondent had moved the Supreme Court for special leave to appeal, and by the order passed on December 20, 1991, Special Leave Petition was dismissed with the observation that the order will not prevent the first respondent from raising the objections which are available to him according to law when the evidence is led on the relevant allegations. This Court had, while passing the order, observed at the end of para-35 as follows :—

"In the present case, sufficient details have been given in respect of every item to show how the money was spent, for what purpose it was spent, who received the money and the period within which the money came to be spent, with a positive averment that it was the money of the respondent No. 1. Merely because both the terms, "incurred" and "authorised" have been used, no ambiguity occurs. All the material facts have been pleaded and there is no substance in the contention that the pleading with regard to the election expenses incurred by the respondent No. 1 is lacking in material particulars."

10. The learned Advocate General urged on behalf of the first respondent that he was not questioning the position in this Court at this stage that material facts had been pleaded, but in his submission, material particulars, which are also required to be pleaded, have not been set out, and the petitioners were not therefore, free to adduce the evidence in support of the allegations in para 2.3 of the petition, after referring to the account of election expenses lodged with the District Election Officer by the first respondent on 12th July, 1991, showing an expenditure of Rs. 72,421.85. It was mentioned that the

respondent No. 1 had not kept correct account of expenditure incurred and/or authorised by him or by his election agent in relation to the election held on 12th June, 1991, the expenditure incurred and/or authorised by the respondent No. 1 or by his election agent being more than what had been shown in the return lodged under section 78 of the Act, because a huge expenditure was incurred in connection with the election of the respondent No. 1 was purported to have been incurred by the political party and other associations, persons or individuals. In fact, the pleading was that the expenditure was incurred and authorised by the respondent No. 1 himself and by his election agent, and that the respondent No. 1 had placed his own funds in the power and possession of such organisations, individuals and political party in order to escape from the mischiefs of sections 77, 78 and 123(6) of the Act. The actual expenditure authorised and incurred by the respondent No. 1 was given in the following paragraphs of the petition. It is, therefore, clear that all the items of expenditure which have been mentioned in para 2.4 onwards have reference to the acts of the respondent No. 1 and his election agent, Sudhakar Deshmukh.

106. I have already dealt with the items of expenditure mentioned in paras 2.4 to 2.20 of the petition. Para 2.21 of the petition contains an averment that the respondent No. 1 had incurred total expenditure of Rs. 6,27,185.00 for publishing advertisements in the local newspapers for promoting his own candidature, during the period 23-4-1991 to 16-6-91 the particulars of which are furnished in Annexure-15 forming part and parcel of the petition and the details appeared in paragraphs appeared hereafter. It is, therefore, clear that there was a clear averment that the respondent No. 1 himself and/or his election agent had authorised the expenditure which has been mentioned in para 2.21 onwards.

107. The learned Advocate General referred to the portions introduced by amendment from paras 2.23(a) to 2.23(d) of the petition, and in respect of para 2.23(d) contended that a corrupt practice different from the one already pleaded was being introduced, because the original petition related to the corrupt practices of the respondent No. 1, while by the amendment in para 2.23(d), the corrupt practices indulged in by Sudhakar Deshmukh were also sought to be robed in. That paragraph reads that Sudhakar Deshmukh, who was the election agent of the respondent No. 1 Shri Dattaji Meghe had authorised and incurred on 14-6-1991 an expenditure to the tune of Rs. 30,000.00 in addition to what has been stated earlier towards the advertisements released to newspapers, viz., Tarun Bharat, Nav Bharat, Nagpura Times, Nagpur Patrika and Lokmat through Prasad Publicity, Nagpur, the expenditure being Rs. 30,000 which was not shown in the return of expenses. Reliance was placed on the observations in Samant N. Balakrishna, v. George Fernandez (AIR 1969 Supreme Court 1201), that the function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet, and the observations that in the scheme of election law, if the charge is that the agent did something, it cannot be amplified by giving particulars of acts on the part of the candidate or vice versa. Publication of false statements by an agent is one cause of action publication of false statements by the candidate is quite a different cause of action. I have already pointed out that the petitioners had alleged that the respondent No. 1 and/or his election agent had incurred or authorised the expenditure mentioned, and though the amendment came to be made more than 45 days after the result of the election, no new corrupt practice was being pleaded. When the acts attributed to the election agent in respect of the corrupt practice already alleged, there was no difficulty in the petitioners giving particulars of the expenditure incurred by the election agent by way of an amendment. In fact, I have referred to this position while passing the orders on the applications for amendment (Exhibits 28 and 44) on 18th December, 1991, pointing out the position of law as laid down in D. P. Mishra v. Kajal Narayan Sharma (AIR 1970 Supreme Court 1477) and P. C. Purushothama Reddiat v. S. Perumal (AIR 1972 Supreme Court 608) and how, if the corrupt practice was pleaded, the additional items of expenditure, which had not been mentioned in the original pleading, can be added by way of an amendment.

108. With regard to the particulars, apart from what has been stated in the main body of the petition, the petitioners annexed the tables at Annexure 15, Annexures A to H showing the details of the advertisements which had been given to eight newspapers, by giving the dates of publication of the advertisements, their sizes, rates of the advertisements, the total amount paid on each of the advertisements together with the names of the alleged publishers. With regard to the advertisements, against with the names of the publishers did not appear, it was mentioned that all these advertisements were given by the respondent No. 1 himself in connection with the election and he himself had incurred the expenditure, and with respect to the advertisements, in which the names of the publishers were shown. It was stated that the expenditure for all those advertisements had been incurred by the respondent No. 1 himself. It is difficult to see, considering that the petitioners were strangers to the advertisements, and the advertisements were alleged to have come from the respondent No. 1 or by the publishers who sent their names in respect of the advertisements, how more particulars than those which have been furnished could have been given by the petitioners in this respect.

109. In para 503 of Smt. Indira Nehru Gandhi, v. Shri Raj Narain (AIR 1975 Supreme Court 2299), on which reliance was placed, the position of law as laid down in Samant N. Balakrishna's case (AIR 1969 SC 1201) was reiterated. In para 494 of the report, what was emphasised was the need of pleading the whatever was spent by the Congress (R) Party, either as an express or implied agent of the original respondent, the pleading would not be complete, but as I have pointed out above, in the present case, there are definite allegations that the money was supplied by the first respondent to the parties who have been named as publishers in Annexure-15.

110. In Nihal Singh vs. Rao Birendra Singh [1970(3) Supreme Court Cases 239], while dealing with the question of oral speeches, it was observed that there was a vague and general statement that at meetings in different villages, speeches were given between the 5th and 12th of May, 1968, without specification of date and place of each meeting, and the pleading was vague. Therefore the Court would require much better type of evidence in proof of the meetings than the evidence of the witnesses examined on behalf of the appellant and not that the evidence could not be let in, in the absence of particulars. In Azhar Hussain, v. Rajiv Gandhi (AIR 1986 Supreme Court 1253), while dealing with the question of speeches delivered by the respondent, in para 25, the Court found that the essential ingredients of the alleged corrupt practice had not been spelled out and the charge was no therefore attracted. The present is not the case where the essential ingredients of the charge are found wanting. On the other hand, in Balwant Singh v. Lakshmi Narain (AIR 1960 Supreme Court 770), while dealing with the practice followed in a case where insufficient particulars of corrupt practice are set forth, a Bench of five Judges of the Supreme Court observed that an election petition is not liable to be dismissed in limine merely because full particulars of a corrupt practice alleged in the petition, are not set out. If the objection regarding the particulars is well-founded, the Tribunal should give an opportunity to the petitioner to apply for leave to amend or amplify the particulars of the corrupt practice alleged. Insistence upon full particulars of corrupt practices is undoubtedly of paramount importance in the trial of an election petition but if the parties go to trial despite the absence of full particulars of the corrupt practice alleged and the evidence of the contesting parties is led on the plea raised by the petitioner the petition cannot thereafter be dismissed for want of particulars, because the defect is one of procedure and not one of jurisdiction of the Tribunal to adjudicate upon the plea in the absence of particulars. In Bhagwan Datta Shastri, v. Ram Ratanji Gupta (AIR 1960 Supreme Court 200), also a case decided by the Bench of five-Judges, it was said where notwithstanding the absence of particulars, the evidence is allowed to be given and taken, the question would not be one of absence of jurisdiction but as to whether there has been any material prejudice occasioned by the absence of particulars. It is, therefore, necessary to scrutinise the nature

of the evidence on which the finding can be arrived at and to see whether the first respondent had the fair opportunity of meeting it.

111. In the present case, there was no application by the first respondent asking for particulars, nor was any objection raised at the trial when evidence was being led, and since the objections, which are now raised, would be merely on a matter of procedure, they cannot be entertained, though the need for exercising more care, while considering the evidence cannot be over-emphasised. The learned Counsel for the petitioners took up issue No. 6(c) first and produced a chart giving all the details of the advertisements which came to be given by Sudhakar Deshmukh. The first one is the advertisement dated 18-6-1991 in Lokmat Exhibit 301, though Prasad Publicity, by showing the name of Sudhakar Deshmukh as client in the Release Order Exhibit 309. The bill Exhibit 310 dated 18-6-1991 was for the amount of Rs 9,000 and the amount was received on 20-6-1991. This amount of Rs. 9,000 includes the amount for the advertisement published in Lokmat Samachar on 18-6-1991 through the same agency and the subject of the same bill and Release Order. According to Ashok Jain, the amount was received under the receipt dated 20-6-1991, though he had not brought the receipt. The third item is about the advertisement in Hitavad, dated 18-6-1991, Exhibit 578, released through Prasad Publicity under the Release Order Exhibit 579 for which a bill for Rs. 6000 (Exhibit 580) was drawn on 19-6-1991 and the amount came to be paid under the receipt Exhibit 581 dated 30-9-1991. The fourth item pertaining to Sudhakar Deshmukh is in respect of the advertisement in Nagpur Times dated 18-6-1991 (Exhibit 493), for which the order was booked on 17-6-1991 and the charges were Rs. 7,500. The fifth advertisement is dated 18-6-1991 in Nagpur Patrika Exhibit 494 being the advertisement given by Sudhakar Deshmukh on 17-6-1991 and the charges are included in the amount Rs. 7,500 realised by Nagpur Times. This position is clear from the evidence of Santosh Sarode (P.W. 9). The next advertisement is the one published in Nav Bharat dated 18-6-1991 (Exhibit 400), through Prasad Publicity, under the Release Order dated 17-6-1991, the amount, which was charged under bill Exhibit 401 being Rs. 8,750, and this is borne out from the evidence of P.W. 6 Narayana Gowalan and P.W. 50 Anant Shastri. The advertisement dated 18-6-91 in Tarun Bharat Exhibit 222 was also released by Prasad Publicity, showing Sudhakar Deshmukh as client and under the Release Order Exhibit 223 dated 14-6-1991. The bill for it Exhibit 224 was for Rs. 8,250, and this is established by the evidence of Padmakar Paunikar (P.W. 3) and Anant Shastri (P.W. 50). The total amount covered by these advertisements would be Rs. 39,500.

112. The learned Counsel for the petitioners set out all these details on the basis of evidence in the chart which they made available to me and the learned Advocate General did not dispute the correctness of this chart and the factual position as set out therein, but contested the inclusion of these amounts by raising certain legal contentions with which I shall presently deal.

113. I have already dealt with the objection that there was no reference to Sudhakar Deshmukh until the matter was arised by the amendment of the petition, and this objection cannot be entertained, in view of the reasons which I have already set out above. The second objection was that mens rea, which is an essential ingredient of corrupt practice, was absent. Reliance was placed on Shiopal Singh v. Rampratap (AIR 1965 Supreme Court 677), but the observations there were with regard to the corrupt practice under section 123(4) where mens rea is a necessary ingredient of the corrupt practice and the person, who publishes a statement, whether he is the author or not, does not commit corrupt practice unless he has the requisite knowledge and the sub-section does not accept the doctrine of constructive knowledge. In Smt. Indira Nehru Gandhi v. Raj Narain (AIR 1975 Supreme Court 1299), reference was made to Shiopal Singh's case (*supra*), but there also question was not with regard to the corrupt practice under section 123(6) of the Act but was under section 123(4).

114. Corrupt practices are enumerated in section 123 of the Act, and they include bribery, undue influence, appeal by a candidate or his agent to vote or refrain from voting on the ground of religion etc., promotion of attempt to promote feelings of enmity or hatred between different classes of the citizens, publication by a candidate or his agent of any statement of fact which he either believes to be false or does not believe to be true, in relation to the personal character; hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent, or the use of such vehicle for free conveyance of the voters; and the corrupt practice with which we are concerned, under sub-section (6), of incurring or authorising of expenditure in contravention of section 77. Another corrupt practice comprises of obtaining or procuring any assistance for the furtherance of the prospects of the candidate's election, from any person in the service of the Government. The corrupt practice under sub-section (6) of section 123 is the mere contravention of section 77, and section 77(1) requires that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive. Sub-section (2) provides that the account shall contain such particulars, as may be prescribed, while sub-section (3) provides that the total of the said expenditure shall not exceed such amount as may be prescribed. It is obvious from the provisions which have been referred to that there is no manner of a mental attitude or mens rea and it has not been made an ingredient of the corrupt practice under sub-section (6) of section 123 of the Act. It is the mere expenditure in excess of that prescribed under section 77 that entails a finding of corrupt practice without anything more, and this sub-section stands apart from the other sub-sections of section 123 which have as one of their ingredients the mens rea. It is, therefore, not possible to accept the contention that mens rea is an essential ingredient of the corrupt practice, and if that has not been established, the first respondent cannot be brought in under section 123(6) of the Act.

115. Another submission of the learned Advocate General was that the liability had been incurred on the date of printing which was the date of publication, i.e., 18-6-1991. Though an attempt was made by P.W. 50-Anant Shastri who is the proprietor of Prasad Publicity, to show that he had not mentioned the date in the Release Order dated 14-6-1991 and the date was put wrongly as 14-6-1991, he had, in fact, received the order in the mid-night of 17-6-1991, and since the advertisement was to go to the Press, immediately, there was a mistake in putting the date. It is apparent from the book of counter-foils (Exhibit 700¹⁷) that the Release Order No. 4772 came to be issued after two Release Orders No. 4770 and 4771, the office copies of which do not bear the dates. The carbon copy of the Release Order No. 4769 issued to Nav Bharat, which shows the name of Sudhakar Deshmukh as the client, was issued on 17-6-1991. The carbon copy of the Release Order to Nav Bharat, which bears No. 4768, bears the date 17-6-1991. The carbon copy of the Release Order issued to Janvad bears No. 4767 and is not dated. The carbon copy of Release Order No. 4766 issued to Lokmat Samachar, which shows Saket Clinic as the client, bears the date 14-6. It was quite possible that the Release Order No. 4772 might have been wrongly dated as 14-6, and there is no reason to reject Anant Shastri's version on this point. What is of importance, however, is that these advertisements were issued as thanksgiving advertisements occasioned by the success of the first-respondent at the election. These advertisements purport to have been issued by the first respondent with a note by Sudhakar Deshmukh, the election agent, also, thanking the voters and the office-bearers and the workers of his party. The advertisement could not have been prepared or contemplated before the result of the election was declared, and it is unlikely, therefore, that the date 14-6 may have been put on the carbon copy of the Release Order.

116. With regard to the submission of the learned Advocate General that the date of incurring the liability for the publication in the newspapers would be the date of the

publication. It is not possible to accept that submission, because all the orders were booked for the concerned newspapers before the mid-night of 17th June, 1991, and in order that they should have appeared in the issues of the next date, it was necessary that they must have been accepted, when the offer was made. Once the offer was accepted, and there is no reason to hold that they were accepted at any time after the mid-night of 17th June, 1991, it must follow that the liability was incurred on the 17th, i.e., the date of the declaration of the result. The learned Advocate General stated that he was not raising any issue regarding the exact time of booking the order with the Press, whether it was before the mid-night or otherwise, and stated that he would proceed on the assumption that the offer was made and was accepted on 17-6-1991 itself. Even a part from this statement, I am satisfied that the liability was incurred on the date of the declaration of the result, by virtue of the advertisement being lodged on 17th June, 1991.

117. According to the learned Advocate General, the agency of Sudhakar Deshmukh as an election agent of the first respondent came to an end with the declaration of the result of the election. Under section 67A of the Act, for the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of section 53 or section 66, to be elected to a House of Parliament or of the Legislature of a State, shall be the date of election of that candidate, and it will be this date which will have to be taken into consideration for the purposes of section 77 of the Act. Section 40, which deals with the election agents, provides, that a candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer. Section 41 deals with disqualification for being an election agent, while under sub-section (1) of section 42, any revocation of the appointment of an election agent shall be signed by the candidate, and shall operate from the date on which it is lodged with the returning officer. Under sub-section (2), in such an event, the candidates may appoint in the prescribed manner another person to be his election agent, but this is to be done before the account of the candidate's election expenses had been lodged in accordance with the provisions of section 78. Section 78 requires that every contesting candidate at an election shall, within thirty days from the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates, lodge with the District Election Officer an account of his election expenses which shall be a true copy of the amount kept by him or by his election agent under section 77. It, therefore, follows that under the provisions of the statute, the agency continues, unless revoked earlier, even until the account of the candidate's election expenses has been lodged under section 78, and the outer limit would be of thirty days after the declaration of the result.

118. From the evidence of the first respondent Meghe, it is clear that the vouchers, which had been submitted before the District Election Officer, bore the signature of Sudhakar Deshmukh under the endorsement 'Paid and cancelled'. He stated that it may be that Sudhakar Deshmukh was his Election Agent until he filed the return of expenses with the District Election Officer, and Sudhakar Deshmukh had not spent even a single paisa for his election. Earlier when some of the vouchers were shown to him during cross-examination, he denied that they bore the signature of Sudhakar Deshmukh. In view of the material on record and the statutory provisions, it is apparent that Sudhakar Deshmukh continued to be the Election Agent of the first respondent at least until the account of the election expenses was lodged with the District Election Officer.

119. Much of the argument turned on the language of section 71 of the Act which needs to be extracted here :

"Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election, incurred or authorised by him or by his

election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive."

Sub-section (3) of section 77 mandates that the total of the said expenditure shall not exceed such amount as may be prescribed. Rule 86 of the Conduct of Election Rules sets down the mode of keeping the account, and under rule 90, the maximum election expenses in respect of a Parliamentary Constituency in Maharashtra shall not exceed Rs. 1,50,000.00. The emphasis on behalf of the petitioners was on the thanks giving advertisements, because expenses in respect of these advertisements were incurred before the mid-night of 17th and 18th June, 1991 by the election agent who, as observed in Somant N. Balkrishna V. George Fernandez (AIR 1969 Supreme Court 1201), is the alter ego of the candidate in the scheme of the Act and his acts are the acts of the candidate, consent or no consent on the part of the candidate.

120. The learned Advocate General urged that it is not each and every item of expenditure which is incurred or authorised by the candidate, that will come within the sweep of section 77 of the Act, but only the expenditure in connection with the election incurred or authorised by him or his election agent between the two dates, and since the election process would be over with the declaration of the result, any expenditure incurred after the declaration of their result would not be an expenditure in connection with the election. While considering the provisions of Article 329(b) of the Constitution, it was pointed out in Dr. N. B. Khare v. Election Commission of India (AIR 1951 SC 694) that in the wide sense, the word "election" is used to connote the entire process culminating in the candidate being declared as elected and, therefore, the enquiry is to be made after such completed election, i.e., after a candidate is declared to be elected. In Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi (AIR 1978 Supreme Court 851) after referring to the case, it was observed that the rainbow of operations, covered by the compendious expression 'election', commences from the initial notification and culminates in the declaration of the result of a candidate, and the same position is reiterated in S. T. Muthusami V. Natrajan (AIR 1988 Supreme Court 616). Since the word "election" has not been defined in the Act, the meaning given in Article 329(b) of the Constitution shall have to be given to that expression, while construing the provisions of this Act also, and it would be obvious that the process of election would be over with the declaration of the result.

121. The contention on behalf of the petitioners was that the phrase "expenditure in connection with the election" cannot be dissociated from the two termini, that is the date on which the candidate was nominated and the date of declaration of the result thereof, both days inclusive, because if it were the intention of the Legislature to provide for maintenance of the account only upto the moment of the declaration of the result, the outer limit would not have been the date of the declaration of the result which must include the time upto the mid-night and so the whole of the period after the declaration of the until the mid-night of the date shall have to be taken into account for invoking the ban under sub-section (3) of section 77 of the Act. As observed in State of Rajasthan v. Leela Jain (AIR 1965 Supreme Court 1296), unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or of justice entertained by the Court. It is not possible to reject the words used in an enactment merely for the reason that they do not accord with the context in which they occur, or with the purpose of the legislation as gathered from the preamble or long title. In Vidyacharan Shukla v. Khubchand Baghel (AIR 1964 Supreme Court 1099), it was laid down that it is a well-settled rule that a construction which will leave without effect any part of the language of a statute will normally be rejected, or to put it in a positive form, the Court shall ordinarily give meaning to every word used in the section. As observed in Dalbagh Rai Jerry v. Union of India (AIR 1974 Supreme Court 130), the Legislature is not supposed to indulge in tautology, and when it uses analogous words or phrases in the alternative, each may be presumed to convey a separate and distinct meaning, the choice of either of which may involve the rejection of the

other. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. (AIR 1987 Supreme Court 1023), it was said that interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at in the context of an enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context.

122. It is not necessary to multiply the authorities, except to point out that in Dr. P. Nalla Thampy Terah v. Union of India (AJR 1985 Supreme Court 1133) while referring to the letter dated October 18, 1979, circulated by the Election Commission of India to the effect that expenditure should be at such reasonably low level as not to defeat the very purpose of fixing a ceiling on election expenses, i.e., curbing the influence of money power on election, it was observed that if there were no limit on expenditure, political parties would go all out for collecting contributions and obviously the largest contributions would be from the rich and affluent who constitute but a fraction of the electorate. The pernicious influence of big money would then play a decisive role in controlling the democratic process in the country, and this would inevitably lead to the worst form of political corruption and that in its wake is bound to produce other vices at all levels. These are the observations made for upholding the constitutional validity of Explanation 1 to section 77 of the Act. If the premise is that there should be a limit to the expenses which will be permissible for the individual candidate to incur, the purpose of enforcing the limit would be over by the time the result of the election is declared. There is no likely to be any pollution of the elective process after the result of the election is declared and this appears to be the purpose behind putting the outer time-limit to incurring expenditure on election, the one mentioned in section 77(1), the date of the declaration of the result. That, however is not the only requirement of section 77. The limit is to the expenditure in connection with the election, and if the election process is over, the moment the result of the election is declared, any expenditure incurred thereafter would not be an expenditure incurred in connection with the election.

123. The learned Counsel for the petitioners urged that the expression, "expenditure in connection with the election", is of the widest amplitude, and reliance was placed on Renu-sagar Power Co. Ltd. v. General Electric Company (AIR 1985 Supreme Court 1156), which lays down that expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to", the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect of the arbitration agreement. There, the question was whether the dispute with regard to three agreements could be brought within the sweep of arbitration, and it was held that the validity of the agreement was a question which could go to arbitration. The expressions "pertaining to", "in relation to" and "arising out of" used in the decreeing provisions of sections 3 and 4 of the Swadeshi Cotton Mills and Company Limited (Acquisition and Transfer of Undertakings) Act, (30 of 1986), were held to have been used in the extensive sense, having the same side meaning and have been used interchangeably. In New Webster's Dictionary of the English language, "connect" means to bind or fasten together, join or unite link as two things together or one with another to establish communication between, to be in communication with, to bring into association or relation. It is difficult to see what nexus the amounts spent on thanks-giving advertisements could have to the election which had already been completed upon the result having been declared, though the occasion for incurring that expenditure was supplied by the result of the election. Considering the provisions of section 77(1) of the Act, in the context of the provisions which have been indicated for maintaining the purity of the electoral process, the expenditure incurred, after the result of the

election is declared, cannot have any nexus with the purity of the electoral process. While it is true that full effect will have to be given to the words which prescribe the outer limit for maintaining the account in respect of the election expenses, it is equally true that the phrase "expenditure in connection" shall have to be given its true meaning, while considering the provisions of section 77 of the Act. It could be that some expenditure in connection with the election may be incurred after the declaration of the result. Such a possibility cannot be ruled out, and it is unnecessary here to illustrate how such instances might occur. It would be legitimate to infer that the Legislature was aware how the term "election" was understood by the Courts, and in its wisdom, thought of providing an outer limit also for the period during which the expenditure might be incurred after the declaration of the election. In this view of the matter, the expenditure Rs. 39,500 on the seven thanks-giving advertisements cannot fall within the prohibitory limits set out in sub-section (1) of section 77 of the Act and cannot be considered while computing the expenses incurred by the first respondent.

124. The learned Counsel for the petitioners prepared a chart containing 27 items of expenditure on the advertisements published on different dates in several newspapers concerning which the name of the first respondent was shown as the client in the Release Orders issued by the advertising agencies and the bills raised by the publishers of newspapers. These advertisements were released by two Advertising Agencies Yugdharma Consultants and Commercial Services ('YCCS' for short) and Prasad Publicity. The advertisement first in point of time was published in Tarun Bharat dated 28-4-1991 (Exhibit 88/1), on the basis of the Release Order of Prasad Publicity Exhibit 225, dated 25-4-1991. The bill Exhibit 156 for Rs. 1,320 was issued by Tarun Bharat and was paid under the receipt Exhibit 157 on 29-4-1991. In all 15 advertisements published in Daily Tarun Bharat beginning from 28-4-1991 to 10-6-1991 were pleaded, the total amount of expenditure being Rs. 41,305.00. The first one in Annex D of Annexure-15 was issued on the basis of the Release Order Exhibit 225 by Prasad Publicity mentioning Datta Meghe as the client. Two witnesses were examined by the petitioners to prove the amount of expenditure incurred on the advertisements published in Tarun Bharat and they were Padmakar Paunikar (P.W.3) and Arun Bhojraj (P.W.12).

125. The substance of the evidence of Padmakar Paunikar (P.W.3) is that the names in the bills/receipts and programme registers were mentioned on the basis of the Release Orders. Bills used to be issued on different formats. Before January 1991, bills were issued in the format with the heading of Tarun Bharat, while after January, 1991, the bills were issued on the forms with the heading of Narkesri Prakashan, which published Tarun Bharat. All the bills were issued in loose sheets and not from any bound bill-books. The office copies of the bills issued used to be collected and kept in and unbound file. Some of the orders received between 6.00 p.m. and midnight, were not entered in the programme register Exhibit 219. There were not printed serial numbers on the bills. It was urged on behalf of the first respondent that Padmakar Paunikar was himself a BJP worker and, therefore, interested in the second respondent, but there is no basis for this submission, because only the trustee of Narkesri Prakashan had political leanings towards the Rashtriya Swayam Sewak Sangh and BJP. Padmakar Paunikar was employed with Tarun Bharat, as an advertising Manager.

126. With regard to the first Release Order dated 28-4-1991, Padmakar Paunikar stated that it was released by Prasad Publicity and that he had prepared the bill for it on 29-4-1991, and it included two other advertisements published on 29-4-1991. Exhibits 156 and 227 are the copies of the same bill dated 29-4-1991, bearing bill No. 4138. Bill Exhibit 227 is in the format of Tarun Bharat while the bill Exhibit 156 is in the format of Narkesri Prakashan. In the copy of the bill Exh. 227, the name of the client is shown as M/s. Yeshwantrao Forum, while in Exhibit 156, it is shown as M/s. Shri Datta Meghe. According to Anant Shastri (P.W.50), the proprietor of Prasad Publicity, the Release Order Exhibit 225 was for three insertions—one for 28-4-1991—

and two for 29-4-1991. The learned Advocate General urged that the Release Order for the advertisement which was printed in the issue of 28-4-1991 could not be found in Exhibit 225 but no question was put to Anant Shastri in respect of the date 28.4., which appears in the first column of the Release Order Exhibit 225, and the statement of Anant Shastri, that the Release Order was for the three advertisements, shall have to be accepted. It is apparent that Anant Shastri started his advertising business in 1983 and has been receiving the advertisements from several institutions run by the first respondent, including Radhikabai Meghe Memorial Trust, Nagar Yuwak Shikshan Sanstha, Polytechnic, Engineering College, Dental College, Pharmacy and Medical College, and he has been releasing advertisements for these institutions since 1984. His evidence shows that he released advertisements for the candidature of the first respondent alone, advertisements were issued through him at the behest of Nagpur Zilla Congress, Yuvak Congress, Gramin Congress, Mahila Congress, Yeshwantrao Chavan Social Forum, Rajiv Sena, Gitananad, Nagpur Republican Party and Sudhakar-rao Deshmukh. He claimed to have received the payments for the advertisements from the organisations concerned and prepared this bills for the advertisement charges bearing the names of those institutions or associations. He referred to a compilation which he had brought with him, claiming that he had himself compiled it by preparing the xerox copies of the cuttings of the newspapers which he had received. However, some of the xerox copies in that compilation had on them exhibit numbers given by the Court, viz., Exhibits 246 and 286. He could not say who wrote those exhibit numbers on the pages in the compilation, and it was obvious that the compilation, with the exhibit numbers on them, were furnished to him by the party in whose favour he was to depose. The Release Orders, which he had issued from 25-4-91 to 18-6-1991, are to be found in two books-documents Nos. 4 and 7 of the list Exhibit 700. The other regular bills, not connected with the election, were prepared separately and not from these two books. His evidence shows that he did not issue any advertisements except in Tarun Bharat on 28-4-1991 in respect of the candidature of the first respondent. In the Release Order, which he had issued to Lokmat Samachar and Nagpur Patrika, the client's name was shown as Datta Meghe Karyalaya, and in the Release Order issued to Nav Bharat, only the name of Datta Meghe was shown.

127. Another notable feature of Anant Shastri's evidence is that he did not himself write the Account Books, but they were written by his Accountant Dhaled. He first prepared the counter-foils of bills and from them the original bills which were handed over to the clients. The abbreviation 'L.F.' in the left hand side column of the copies of the bills meant 'Ledger Folio number' which was given for his own reference. The Ledger, professed to be prepared as a rough book, was not with him and was destroyed. After referring to the counter foils books, he said that Ledger Folio No. 226 pertained to Yeshwantrao Chauhan Social Forum, and counter-foil No. 003363 from the counter-foil book, which also bore Ledger Folio No. 226, was issued in the name of Datta Meghe Mitra Mandal. The writing below Datta Meghe Mitra Mandal, namely, the word "staff" was scored out. Counter-foil No. 003364 bore Ledger Folio No. 226, and the name of the party was Nagpur Zilla Congress Committee, and Counter-foil No. 003365 with the same ledger folio number was issued in the name of Narayan Ahuja and No. 003366 with the same ledger folio number was issued in the name of Rajiv Sena. These several organisations were clubbed under ledger folio No. 226. He denied the suggestion that the entire account was in the name of Datta Meghe and that account was given ledger folio No. 226. It is apparent from his evidence that counter-foil No. 003361 at ledger folio No. 222, was in respect of Nagpur Congress and ledger folio No. 162 appearing on counter-foil No. 003309 was for Radhikabai Meghe Memorial Trust. As regards the bills received from the Press, he stated that the names of the clients appeared on them and it did not happen that the Press gave the wrong names requiring corrections to be made, and he was not required to meet either Bhojraj or Paumikar of Tarun Bharat, after July, 1991, in respect of the election bills. He had a running account with Tarun Bharat and that account is still continuing. He claimed to have destroyed his rough ledger in the last week of March 1992 and said that he had received the summons to give evidence at the end of March, 1992. However, in para 19 of his deposition, he admitted that he received the

summons to appear as witness in this case on 20th February, 1992. The letter had asked him to produce cash books ledger books, release orders, bank pass books, bank pay-in-slips, and contract notes, but he had no qualms in destroying the ledger after receiving the summons, and it is obvious that to enjoy the patronage of the first respondent and his institution, he destroyed the material documents probably because those documents, if retained, would not have been favourable to the first respondent.

128. The learned council for the first respondent urged that Anant Shastri had given an explanation for destroying the rough ledger, namely, that though he had received the summons in February, 1992, because there were no entries therein pertaining to the election and the entries had already been taken in the final register for the rough ledger by that time, it was destroyed after the entries were carried to the final ledger. The position remains, however, that whatever documents he had with him, which he was under an obligation to produce in response to the summons issued by this Court, had been destroyed; in spite of the summons, and it is difficult to see what justification the witness could have had in the circumstances, to destroy the original documents, unless it were to benefit the first respondent.

129. Anant Shastri's interest in the first respondent is further apparent from the fact that he had received the bills from Tarun Bharat in the last week of June or in the first week of July 1991, in respect of the election advertisements, but he could not remember if he had handed over these bills either to Datta Meghe's worker or a Congress worker and had not obtained any acknowledgement from that person. The casual manner in which he parted with the important documents is apparent from his statement in para-21 of his deposition that the man, who came to him from Tarun Bharat for getting the bills, did not tell him that he had come on behalf of Datta Meghe and that he had assumed that he might have come on behalf of Datta Meghe, because the bills were regarding his election.

130. The learned Advocate General urged that the Release Order Exhibit 225 was suspicious, because the date 28-4-1991 does not appear on the carbon copy Exhibit 712 which was produced by Anant Shastri, and it was unlikely that the date 28-4-1991 would have been put in the Release Order Exhibit 225 when the advertisement itself had been issued on 28-4-1991. The date 28.4. appears at the top, on the line across the column above in which the headings of the columns appear, but for that reason alone, the fact that the release order was subsequently tampered with cannot be accepted. Anant Shastri (P.W. 50) was not, in any event, a witness who would have accepted the date 28-4-1991 in the Release Order, if it were not there originally, and he has stated that these three dates were in the Release Orders which he had given to Tarun Bharat. He stated that all the Release Orders, which he had issued from 25-4-1991 to 18-6-1991 are to be found in the two books produced at Nos. 4 and 7 of the list Exhibit 700. Reference was made, out of them, specifically to the carbon copies of the Release Order No. 5030 (Exhibit 711) issued to Nagpur Patrika on 28-4-1991; No. 5032 (Exhibit 712) issued to Lokmat; No. 5033 (Exhibit 710) issued to Nav Bharat, which all bore the date 28-4-1991. The carbon copy of the Release Order No. 5031 dated 28-4-1991 also appears in the same book and the name of Datta Meghe appears in the carbon copy as the client, though the date of insertion 28-4-1991 does not appear on it. Though below the name Datta Meghe, the word 'Karyalaya' is mentioned in Exhibit 711, the manner in which the word has been written would not show that the word 'Karyalaya' might not have been written on 28-4-1991. The carbon copy Exhibit 712 also mentions the word 'Karyalaya' below the name of Datta Meghe, which again does not appear to have been written at the time of writing the original document. In the carbon copy of the Release Order sent to Nav Bharat on 28-4-1991—Exhibit 710, the client's name appears as Shri Datta Meghe. It is, therefore, clear that when the Release Orders were issued by Prasad Publicity on 28-4-1991, the name of the client was mentioned as Shri Datta Meghe, but the carbon copies of some of the Release Orders issued on that very date had been changed so as to represent that the Release Orders came from Datta Meghe Karyalaya.

131. In his cross-examination, Anant Shastri mentioned that the Advertisement dated 28-4-1991 was given to him by Vasant Parshionikar for Nagpur Nagar Zilla Congress, and it was a programme arranged by the Nagpur Nagar Zilla Congress Committee, and he had given identical advertisements to four newspapers including Nagpur Patrika and Lokmat. According to him, the word 'Karyalaya' was omitted from Exhibit 225, as he forgot to mention it, as Datta Meghe was not his client for these advertisements, and the words "Datta Meghe" were used only as a caption, and the bill was issued in the name of Nagpur Nagar Zilla Congress Committee, on 30-4-1991. The bill Exhibit 725 refers to the insertions in the newspapers in which the advertisements were given and were drawn by Prasad Publicity against Nagpur Shahar Zilla Congress Committee on 30-4-1991. This document evidently is not consistent with the Release Orders to which I have adverted, in which the names of Datta Meghe and Datta Meghe Karyalaya came to be mentioned. According to Anant Shastri, when he came to know that Vasant Parshionikar was appointed in-charge of election by Nagpur Nagar Zilla Congress and was to issue advertisements for the election of Datta Meghe, he contacted him and asked him to give him also some advertising work.

132. Vasant Parshionikar's position, as is apparent from the evidence of the first respondent, was that of his confidant. He knew Vasant Parshionikar for nearly ten to fifteen years, as he was a Congress(S) candidate for the Assembly election of 1984 from Central Nagpur Legislative Assembly Constituency and the respondent No. 1 had worked for his election. Though the respondent No. 1 denied that he had any other dealings with Vasant Parshionikar, except the association with him in politics, it is apparent that when the Congress (I) had to face defeat in 1977 in North India, there were defections in Nagpur Pradesh Congress (I) and at that time, Sudhakarao Nimbalkar, Sudhakar Deshmukh, Vasant Parshionikar, Pratapsingh Chavan and others were with him, and they all with the other parties formed a front (Pulod). Parshionikar lost the election from Nagpur Central Constituency. It is, therefore, clear that Parshionikar was not only an office-bearer of Nagpur Shahar Congress Committee, but also a close-confidant of the first respondent. It is difficult to see, if the transactions of issuing advertisements to the newspapers on 28-4-1991 were to be entered on behalf of the Nagpur Shahar Congress Committee, why the name of first respondent should have been entered in the Release Orders issued on 28-4-1991. Even Anant Shastri was aware of the fact that Vasant Parshionikar was in-charge of the advertisements, and if his statement that he was acting on behalf of Nagpur Shahar Congress Committee were true, then the name of Nagpur Shahar Congress Committee should have appeared in the Release Orders which were issued on 28-4-1991. There was no need to issue the bill dated 29th April, 1991 in the name of Yeshwantrao Chavan Forum, if the insertions of 28th and 29th April, 1991 were to have come from Nagpur Shahar Congress Committee.

133. According to Padmakar Paunikar (P.W. 3), the bill Exhibit 156 was issued to the party on 29-4-1991 itself. Exhibit 156, according to Paunikar, was signed by Bhojraj and the receipt Exhibit 157 also was signed by Bhojraj. He stated that the bills Exhibits 156 and 227 were prepared on two different type-writers. According to Bhojraj (P.W. 12), Exhibits 156 and 227 both bore his signature and Exhibit 227 was issued when Prasad Publicity represented to them that they had not received the copy of the bill, and since by then they started using the forms bearing the heading of Narkeshri Prakaashan. Exhibit 227 came to be issued on the form of Narkeshri Prakaashan and the office copies of these two bills Exhibits 156 and 227 were on the form of Tarun Bharat. In the office copy Exhibit 603, which is in the format of Tarun Bharat, M/s. Datta Meyhe has been shown as the client. According to Bhojraj, the name of Yeshwantrao Chavan Forum was shown as client in Exhibit 227, because they asked for the bill in the name of Yeshwantrao Forum when the bill Exhibit 227 was issued, either in August or September, 1991 and it was Anant Shastri who asked for these bills. Except that, Exhibit 156 was in the form of Narkeshri Prakaashan and Exhibit 603 was in the form of Tarun Bharat, the documents are identical. The copy to be filed in the Court was supplied in the format of Narkeshri Prakaashan, because by that time, they started issuing bills in the name of Narkeshri Prakaashan and they were not left with the forms of Tarun Bharat.

134. If one were to go only by the different formats on which the bills were issued and different names which appeared on the bills, it would appear that there was a good deal of confusion and on the basis of the bills themselves, no inference could be raised as to who was the real client. If regard is to be had to the fact that the original Release Orders mentioned the name of Datta Meghe as client, there was no reason for Tarun Bharat to depart from normal practice of issuing the bills in the name of Prasad Publicity by showing Datta Meghe as the client, and that seems to have been done with the bill Exhibit 156 was issued purportedly on 29-4-1991 on the format of Narkeshri Prakaashan. By that time, the forms of Narkeshri Prakaashan were being used. It would be only when a bill with a different name would be required that the change in the name would appear, and the only person, who was interested in having a bill in the name different from the one used in the Release Order, would be Prasad Publicity which was represented by Anant Shastri. To the extent that Datta Meghe's name appeared in the original Release Order, there is no demur even by Anant Shastri who was a party to the transaction. If his version that the name of Datta Meghe was mentioned merely as a caption were true, there was no difficulty for him to allow the name of Datta Meghe to continue in the original bills which were issued. Coupled with the position that all the original documents issued by Tarun Bharat are said to have been handed over by Anant Shastri to a person about whose identity he was not clear, it is difficult to accept the position that the name of Datta Meghe in the Release Orders issued to Tarun Bharat appeared merely as a caption. There was no reason for Anant Shastri to part with all the original documents and to destroy his original account-books, even after receiving the summons from the Court, unless the idea was to have the documentary evidence appear in a different colour and all the traces of Datta Meghe being the real person behind the transaction should be wiped out.

135. In this context, the circumstances, that the bills were on different formats, not serially numbered, loosely kept and that there was no sequence in giving the numbers to the bills and that some of the bills, which were issued on later dates with the earlier number and vice versa, would not be very significant. The advertisement dated 28-4-1991 in Tarun Bharat Exhibit 88/1 purports to be an invitation by several Congress Organisations for the opening ceremony of the election office of the first respondent on 28-4-1991. The very same advertisement as repeated in other three newspapers which were published on 28th and 29th April, 1991 but I have adverted to the advertisements released by Prasad Publicity showing the name of Datta Meghe as the client, to Tarun Bharat only as the bill also came to be issued in his name for the advertisement.

In view of the above factors, there can be no doubt, though there was a deliberate attempt to disguise the transaction, that the amount Rs. 1,320 under the bill Exhibit 156 for the advertisement published in Tarun Bharat dated 21-4-1991 (Exhibit 88/1) on the basis of the Release Order (Ex. 225), was paid by the first respondent under receipt Exhibit 157, on 29-4-1991.

136. As regards the advertisements which came to be issued in Janavadi dated 1-5-1991 (Exhibit 90/1); Hitavada dated 3-5-1991 (Exhibit 91/1); Nagpur Times dated 1-5-1991 (Exhibit 84/1); Nagpur Patrika dated 1-5-1991 (Exhibit 85/1); and Nav Bharat dated 2-5-1991 (Exhibit 87/4), in the name of Datta Meghe, offering felicitations to the holy land of Maharashtra on the eve of the Maharashtra Day, the submission on behalf of the first respondent, firstly, is that these advertisements were not published by Datta Meghe and in any event, they had nothing to do with the election, because there was no appeal for a vote, nor the mention of the symbol of the candidature of Datta Meghe for the Lok Sabha election. Obviously, such advertisements, during the period of election, would be an attempt on the part of the candidate at the election to be before the public eye for attracting attention and cannot be regarded as one except for promoting the candidature of the person concerned. The various such advertisements issued in different newspapers, show a calculated attempt to capture the attention of the voters and cannot be ignored only

because the contents of the advertisements did not seek the vote. All these advertisements were issued through YCCS under the Release Orders Exhibits 217, 530 and 587, all dated 30-4-1991. The bills for these advertisements Exhibit 109, dated 1-5-1991; Exhibit 533, 535, 587 dated 5-5-1991; Exhibit 44, dated 15-5-1991 and Exhibit 381 dated 10-5-1991 all stood in the name of the first respondent. The submission of the learned Advocate General was that Madhukar Khisti (PW-55) had only signed the Release Orders on behalf of YCCS and since the real transactions had been entered into by Prakash Deshpande, Thakre and Andhare, merely proving the signatures on the Release Orders through Madhukar Khisti, would not be sufficient proof of the contents of those documents. The Release Orders, which Khisti had himself signed are Exhibits 158, 217, 317, 496, 533, 582, 594 and 597, dated 30-4-1991; Exhibits 218 and 588, dated 1-5-1991; Exhibits 537, 595 and 792, dated 2-5-1991; and Exhibits 183, 213, 313, 543, 796 and 598 dated 3-5-1991. Some of these signatures of Khisti were proved by PW-11 Prabhakar Deshpande, and PW-3 Padamakar Paunikar, the only Release Order, which was proved by Khisti himself being Exhibit 792, dated 2-5-1991.

137. Madhukar Khisti was not an employee of YCCS, but of Daily Yugdharma which is being run by Yugdharma Workers' Newspapers Private Limited, since 1980. Khisti testified to this having signed on the Release Order Ex. 792, dated 2-5-1992, in which the name of Datta Meghe appeared as the client, for publication in the issue of Yugdharma dated 1-5-1991 and 3-5-1991. In this cross-examination, Khisti stated that the first advertisement in the bill Exhibit 795 was described as advertisement for Maharashtra Day, and second, as an election advertisement, and it was Prakash Deshpande who had given the advertisements and not he, and he did only the job of despatching the advertisements. He also added that the name of Datta Meghe was mentioned as client in the Release Order dated 7-5-1991 (Exhibit 797), as the advertisement was for his candidature and the publisher had not given the name. He had not prepared any bills for the YCCS, nor had he prepared the receipts. He stated that no bill or receipt was issued by YCCS in the name of Datta Meghe. Reliance was placed on behalf of the first respondent on Sait Tarajee v. Yelamarti Satyam (AIR 1971 Supreme Court 1865) for the proposition that the mere marking of an exhibit does not dispense with the proof of documents, but there the position was to be that the plaintiff wanted to rely on Exhibits A-12 and *-13, the Day-book and the Ledger, and the plaintiff had not proved the books and there was no reference to those books also in the judgment.

30-7-1992 :

138. The position of law on the point stated in Ramji Davawala and Sons v. Invest Import (AIR 1981 Supreme Court 2085), is as under :—

"Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document, if the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue".

In Birad Mal Singhvi v. Anand Purohit (AIR 1988 Supreme Court 1796), the Court observed that the date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. If the entries were made on the basis of the information given by parents, it would have evidentiary value, but if the information is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.

139. Madhukar Khisti (PW-5) stated in his cross-examination that the name of Datta Meghe was mentioned in the Release Orders of YCCS on their own, because the name of the client had not been disclosed to them. He was asked by Prakash Deshpande to book the space, when the Release Order Exhibit 821 was sent. Prakash Deshpande had not asked him to mention the name of Datta Meghe and he put

the name of Datta Meghe and no other name, because YCCS had taken work of advertisement for Datta Meghe's candidature. Khisti had not received personally any order on behalf of YCCS or from the clients, and the orders used to be received by Prakash Deshpande and Thakre. It is apparent that Khisti was not an employee of Yugdharma Consultant and Commercial Services which was a sister concern, but was an employee of Daily Yugdharma. He used to do whatever work was required to be done for the YCCS, since March 1991. The two persons, who were directly concerned with the work of receiving advertisements and payments as well as the maintenance of accounts, were Thakre and Prakash Deshpande. Both Prakash Deshpande and Thakre were summoned as witnesses by the petitioners on 3-2-1992, and though they were present in Court, they were not examined as witnesses.

140. The learned Counsel for the petitioners urged that the conduct of Khisti, Deshpande and Thakre, in issuing the release orders one after another, should be taken into consideration, and since as many as eleven Release Orders bearing the name of Datta Meghe as the client had been produced, this would not have been done unless Datta Meghe was really the client of YCCS. Reliance was placed on P. C. Purushothama Reddiar v. S. Perumal (AIR 1972 Supreme Court 608), where the Court looked into the police reports, though the Head Constables who had covered the meetings in respect of which the report had been given, had not been examined as witnesses, and the Court ruled that since these reports were marked without any objection, it was not open to the respondent to object to their admissibility. The Court referred with approval to the observations in Navaneetha Krishna Thevar v. Ramaswami Pandia Theelavai (AIR 1918 Madras 889), that the copies of actual entries made in registers of official correspondence kept for reference and record were admissible under section 35 of the Evidence Act as reports and records of acts done by public officers in the course of their official duty and of statements made to them. It was not only because the reports had been marked without any objection that they were read in evidence in P. C. Purushothama Reddiar's case, but also on the other consideration that the entry in a public record stating a fact in issue or relevant fact made by a public servant in the discharge of his official duty, was relevant evidence under section 35 of the Evidence Act. This case, therefore, lends no assistance to the petitioners.

141. In the present case, not only were the witnesses who according to Madhukar Khisti, had personal knowledge of the nature of the transaction on the basis of which the Release Orders came to be issued by giving the name of Datta Meghe as the client, were summoned and dropped, though they could have shed more light on the nature of the first respondent's connection with the Release Orders. Mere mention of the name of Datta Meghe as the client in the numerous Release Orders would not, therefore, absolve the petitioners from adducing further evidence to show what was the nexus between Datta Meghe and YCCS.

142. The bill Exhibit 795, which was issued on 5-5-1991 for the insertions dated 1-5-1991 and 3-5-1991, under the Release Order Exhibit 792, mentions the name of the client as Shri Meghe Advertisement, H. Yugdharma, dated 6-5-1991, Exhibit 799, the advertisement was shown published with courtesy of Nagpur Nagar Congress Committee, and this was in pursuance of the release order dated 7-5-1991 (Exhibit 797) in which Datta Meghe was shown to be the client. In the bill Exhibit 800 dated 8-5-1991, in respect of these advertisements, also it was mentioned that it was being issued on account of Nagpur Nagar Zilla Congress Committee. The fact, that the name of Congress Committees was mentioned in the bills which came to be issued, is indicative of Datta Meghe not being the person at whose instance YCCS had given these advertisements.

143. Considering all these circumstances, I find that Datta Meghe's connection with the advertisements released by YCCS has not been established, and there is no other evidence to show that Datta Meghe either incurred or authorised the expenses for the advertisements released through YCCS, and all the advertisements, which have been issued through the agency of YCCS will have to be left out, while considering the expenses incurred or authorised by the first respondent Datta Meghe.

144. That takes me to item Nos. 1 to 21 and 23 to 27 mentioned in the chart prepared by the petitioners in respect of advertisements through the agencies which show Datta Meghe as client in the Release Orders as well as in the bills which relate to the advertisement in Exhibits 90/1 to 90/4, 90/10, 86/2, to 85/5, 91/1 to 91/4, 84/1, 84/3, 85/1, 85/2, 448, 87/4, 87/5, 88/2, 88/3, 88/6, 88/9 and 88/12.

145. The only basis for urging that the advertisements at item Nos. 1 to 8 at page 6 of the chart were given by the first respondent, was that the Release Orders issued by YCCS to the newspapers concerned, showed the name of Datta Meghe. These were in the issues of Lokmat and Lokmat Samachar dated 1-5-1991 Exhibits 83/2 and 83/3; Lokmat dated 2-5-1991 Exhibit 83/4; Lokmat Samachar, dated 3-5-1991 Exhibit 83/5; Lokmat dated 5-5-1991 Exhibit 83/6; Lokmat Samachar dated 6-5-1991 Exhibit 83/9; Lokmat dated 21-5-1991 Exhibit 83/34; and Lokmat Samachar, dated 21-5-1991 Exhibit 83/35. The bills in respect of these advertisements were issued in the name of the persons other than the first respondent, viz., Sushilabai Jadhav, Nagpur Nagar Congress Committee, Yuwak Congress and Super Steel Furniture. There is no other evidence than that of Madhukar Khisti (PW-55) to show the connection between Datta Meghe and these advertisements, and they would stand on no better footing than the 27 items to which I have already referred, while discussing the instances where the Release Orders and the Bill, both mentioned the name of Datta Meghe as the client.

146. At page No. 5 of the chart are the instances where the name of the agency was YCCS as mentioned in the Release Orders, and the bills mentioned the name other than those stated in the Release Orders, and they relate to the issues of Yugdharma, dated 1-5-1991 Exhibit 793; dated 3-5-1991 Exhibit 794; dated 8-5-1991 Exhibit 798; and dated 11-5-1991 Exhibit 802. For the first of these, the bill Exhibit 795 dated 5-5-1991 was issued, but it was in the name of Shri Meghe Advertisement, to which I have already referred, while considering the evidence of Madhukar Khisti (PW-55). For the advertisement at Exhibit 798, the bill Exhibit 800 stood in the name of Nagpur Nagar Zilla Congress Committee to which also reference has been made earlier. For none of these also, can the responsibility be placed on the first respondent, for the reasons already stated.

147. At page 6 of the chart also instances appear where the advertisements were routed through YCCS and they are in respect of the advertisements in the Lokmat and Lokmat Samachar, dated 1-5-1991 Exhibits 83/2 and 83/3; Lokmat dated 2-5-1991 Exhibit 83/4; Lokmat Samachar, dated 3-5-1991 Exhibit 83/5; Lokmat dated 5-5-1991 Exhibit 83/6; Lokmat Samachar dated 6-5-1991 Exhibit 83/7; Lokmat dated 21-5-1991 Exhibit 83/34; and Lokmat Samachar dated 21-5-1991 Exhibit 83/35. The name of Datta Meghe does not appear in any of the bills which were issued in respect of these advertisements, viz., Exhibits 240, 241 and 294.

148. Besides the advertisements which have been shown to have been released through YCCS in the chart made available by the petitioners, as pointed out in the chart prepared by the first respondent, there were a few more advertisements released through YCCS and I might merely refer to them, because the only witness who spoke for YCCS Madhukar Khisti (PW-55) did not have personal knowledge about the transaction between the first respondent and the YCCS. Prabhakar Deshpande (PW-11), who was the Deputy General Manager of Hita-vada, proved the signature of Madhukar Khisti on the Release Orders Nos. 143 (Ex. 586) and 147, dated 7-5-1991. Besides proving the signatures of the persons concerned on the release Orders 143 and 147, PW-11 Prabhakar Deshpande did not say anything about the actual transaction between YCCS and the first respondent Datta Meghe. These two release orders and the bills showed the name of Nagpur Nagar Congress Committee as the client. Release order dated 20-5-1991 Exhibit 500 was in respect of the advertisement in Nagpur Times dated 20-5-1991 Exhibit 84/7; Nagpur Patrika dated 21-5-1991 and Nagpur Times dated 22-5-1991. Release Order dated 1-5-1991 was a space booking order for 21 to 23rd May, showing the name of Datta

Meghe as the client by YCCS. PW-9 Santosh Sarode, who was working as Manager, General Co-ordination with Nagpur Times, who proved these documents, stated that none of these advertisements were placed with Nagpur Times by the first respondent, nor did he make payments for these advertisements or take responsibility for making the payments, and there was no personal account of Datta Meghe with Nagpur Times and Patrika from 25-4-1991 to 25-6-1991 and all the advertisements were inserted either by YCCS or Prasad Publicity. It was Parshionikar who had brought the amounts for the advertisements issued in the name of Nagpur Shahar District Congress Committee and Nagpur Grahmin Congress Committee, and there was a confusion in the code numbers mentioned in the receipts issued. Though Code numbers had been given to Nitin Furniture, Punjab Wood, Ranjit Engineering Works and Talmale Bros. since payments were made by Parshionikar, they were given the same code numbers. I will deal with the position with regard to the direct advertisements given in the name of these concerns later, but it is apparent that whatever advertisements were given in the name of the Congress, had been paid for by Parshionikar.

149. In the advertisement dated 21-5-1991 (Exhibit 86/15) in Rashtrodot, the Release Order (Exhibit 593) dated 1-5-1991 was for space booking and was signed by Madhukar Khisti. The name of Datta Meghe was shown as the client in it, but as I have already observed, nothing turns upon this mention, in view of the inability of the petitioners to show that the money for the advertisements came from Datta Meghe, in view of the clear admissions made by Madhukar Khisti (PW-55).

150. The advertisement in Lokmat dated 10-5-1991 (Exhibit 83/14) issued under the Release Order dated 8-5-1991, which had not been exhibited, showed the internal Release Order Number as well as the Release Order Number and date of YCCS. The name shown in the advertisement was of Yeshwantrao Forum. In the issue of Nagpur Times, dated 12-5-1991 Exhibit 84/5, which was released under the Release Order No. 9591 (Ex. 497) by YCCS and in the bill Exhibit 453 dated 28-5-1991, the name of Nagpur City District Congress appeared and the advertisement showed the name of Indira Brigade. In the advertisement in Tarun Bharat dated 10-5-1991 (Exhibit 88/8), the name of Yeshwant Forum appeared, while the Release Order dated 8-5-1991 Exhibit 173, and the bill Exhibit 174 showed the advertiser Nagpur Congress Committee. In the Mahasagar (Ex. 516) dated 8-5-1991 an advertisement with the courtesy of Indira Brigade appeared under the Release Order dated 8-5-1991 which showed the name of Nagpur District Congress Committee. The advertisement, which appeared in the issue of Nagpur Times, dated 16-5-1991 (Exhibit 84/6) and in the issue of Nagpur Patrika, respectively the name of Youth Congress and Ghantanath appeared and in the bill dated 28-5-1991 (Exhibit 458) and Release Order dated 13-5-1991 (Ex. 498), the name of Nagpur District Congress Committee appeared. The advertisement in Yugdharma dated 14-5-1991 (Ex. 804) appeared with the courtesy of Bhartiya Sher Sanghatna, under the Release Order Exhibit 803 which showed the name of Nagpur City District Congress as the client, and that was also the name repeated in the bill dated 14-5-1991 (Ex. 805). The advertisements in the issues of Maha Sagar, Naya Khoon and Nagpur Post Exhibits 521, 522 and 523 were released on 14-5-1991 under the Release Order dated 12-5-1991 (Ex. 524) by Nagpur District Congress Committee, as the client. In the issue of Yugdharma dated 15-5-1991 (Ex. 807), an advertisement with the courtesy of Indira Brigade came to be published under the Release Order dated 14-5-1991 (Ex. 806) which showed the name of Nagpur District Congress Committee as the client and the bill dated 15-5-1991 (Ex. 808) also bore that name. In Janavad dated 15-5-1991 (Ex. 90/7), an advertisement appeared with the courtesy of Indira Brigade under the bill dated 15-5-1991 (Ex. 121). The name of the client appeared there is Indira Brigade.

151. There is no evidence to show that all these advertisements referred to above were issued by these persons, institutions and others, at the instance of the first respondent and that it was his money which was used for the advertisements.

152. The advertisements in the issue of Lokmat dated 18-5-1991 (Ex. 83/28); Nagpur Times dated 20-5-1991 (Exhibit 84/68); Nagpur Patrika dated 18-5-1991 (Ex. 463); Tarun Bharat dated 18-5-1991 (Ex. 187), Rashtrodot dated

18-5-1991 (Ex. 83/28); Nagpur Times dated 20-5-1991 (Exhibit 84/68); Nagpur Patrika dated 18-5-1991 (Ex. 463); Tarun Bharat dated 18-5-1991 (Ex. 187), Rashtrodot dated 20-5-1991 (Ex. 86/14), Maha Sagar dated 18-5-1991 and Naya Khoon dated 20-5-1991 (Ex. 528) were issued under the Release Orders dated 14-5-1991 (Exs. 275 and 499); dated 17-5-1991 (Ex. 562); Release Order dated 18-5-1991 (Ex. 356) and Release Order dated 17-5-1991 (Exhibit 529), all of which bore the name of Nagpur District Congress as the client. This name was repeated also in the Bills Exhibits 276, 462, 188, 179 and 563 which were issued for this publication. No Release Order was produced in respect of the advertisement in the Yingdhama (Ex. 809), but the bill (Ex. 810) showed that the client was Vidarbha Professors Club. Besides the evidence of Madhukar Khisti (PW-55), there is no material on record to show how Datta Meghe was connected with these advertisements and Khisti's evidence falls short of the requisite degree of proof.

153. Out of the eight items mentioned at page 7 of the petitioners' chart the fourth, fifth and seventh items relate to the advertisements, dated 8-5-1991, in Nagpur Times and Nagpur Patrika Exhibit 84/4, and Tarun Bharat, dated 1-5-1991 Exhibit 206. There is no other evidence to connect the first respondent Datta Meghe with the two advertisements given in Nagpur Times and Nagpur Patrika, except that of Madhukar Khisti (PW-55). With regard to the advertisement in Tarun Bharat, dated 1-5-1991, the evidence of Padmakar Paunikar (PW-3) and Arun Bhojraj (PW-12) shows that they had no personal knowledge about the connection of Datta Meghe with this advertisement. In the absence of evidence, therefore, it cannot be said that the expenditure on these three advertisements had been incurred by the first respondent Datta Meghe.

154. Item 6 at page 7 of the chart, is the advertisement dated 21-5-1992 in Tarun Bharat (Exhibit 221), and this issue was published as Election Special by Tarun Bharat. Laxman Joshi (PW-39), who is the Chief Editor of Tarun Bharat, stated that he had contacted Datta Meghe about 8 to 10 days before the publication of this issue, on telephone, and requested him to give an advertisement for him, as he was one of the contesting candidates, and Datta Meghe told him that he would think over it. One of his advertisements came to be published in Tarun Bharat dated 21-5-1991. According to Shri Joshi, that advertisement came to Tarun Bharat through Prasad Advertising Agency and the matter to be printed was also to be supplied by the same Advertising Agency. He could not give the details as to whether Prasad Publicity had given the Release Order, as Paunikar and Bhojraj used to look after the work of advertisements, and he could not say whether the bill for this advertisement was prepared in the name of Prasad Publicity and was paid by them. He could not also say who had instructed Prasad Publicity to give these advertisements or who made payments for it to Prasad Publicity. Datta Meghe (1-RW-1) admits that Tarun Bharat had published a Special Issue on 21-5-1991 and that he had a talk with Laxman Joshi seven or eight days before 21-5-1991, asking him to give an advertisement for that issue, and he told him that he would think over it, because he had not issued any advertisement on his own in any newspaper. He states that he forgot about it, as he was busy in the election and had not received any other telephone call from him. He had not asked either his election agent or anyone else to issue the advertisement in the special issue of Tarun Bharat dated 21-5-1991. In para-81 of his cross-examination, he admits that he had seen the advertisement in Exhibit 221 and states that he had told Laxman Joshi that he did not issue any advertisements and that he would think about giving the advertisement. He denied that he had given this advertisement through Prasad Publicity

and also that he had directly paid Rs. 7,000/- for the advertisement of Prasad Publicity. Meghe denied the suggestion that he had asked Anant Shastri of Prasad Publicity to change the bill, because it was not right that the bills should be issued in his name and that he had got the bill Exhibit 234 prepared by Tarun Bharat in the name of Prasad Publicity, changed in the name of NSUI.

155. Anant Shastri (PW-50) did not produce the bill issued by Tarun Bharat. He stated that it was taken away by someone for Datta Meghe saying that it had to be produced in Court and that he did not know who that person was. That person had not brought the summons in the court for its production, and he handed over all the bills received from Tarun Bharat to that person. In para-21 of his deposition, he contradicts the earlier statement by saying that the man who came to him did not tell him that he had come on behalf of Datta Meghe, and he assumed that the man might have come on behalf of Datta Meghe, because the bills were regarding his election. Padmakar Paunikar (PW-3), in para 43 of his deposition, stated that no release order was received showing the name of Datta Meghe for this advertisement. The Chief Editor had told him that the full-page advertisement of Datta Meghe was to be published in the special issue and so Datta Meghe's name was mentioned in the bill Exhibit 192. There is no date on this bill which bears No. 4167, for Rs. 7,000/. It gives the name of the client as M/s. Shri Datta Meghe. Exhibit 234, which bears the date 21-5-1991 and bill No. 4178, is on the format of Tarun Bharat and is drawn in the name of M/s. NSUI. Exhibit 234 was produced with the list Exhibit 226 by the Counsel for the first respondent on 23-3-1992. These three documents, which evidence the same transaction and purport to be the bills for it do not have the same contents. Exhibit 605 bore typed matter "TN/May/4167-91, date 21-5-1991." The number 4178 is scored out and No. 4167 has been substituted in its place. It is on the format of Tarun Bharat and the name of the client is shown as Shri Datta Meghe. It was produced by PW-12-Bhojraj with the list Exhibit 601 on 20-4-1992. Exhibit 234, which was produced by the first respondent with the list Exhibit 226 on 23-3-1992, is a xerox copy which bears typed portion TN/May/4178-91 and the date 21-5-1992. The name of the client is mentioned as M/s. N.S.U.I. Exhibit 192, which is on the format of Narkeshri Prakashan, purports to show that it was bill No. TN/May/4167-91, the month of May, 1991, issued to M/s. Shri Datta Meghe. It was produced by PW-3-Paunikar with the list Exhibit 190-on 20-3-92. According to Paunikar, the signature on Exhibit 192 is that of Bhojraj and Bhojraj (PW-12) admits the position that both the documents Exhibits 192 and 605 are signed by him. According to him, there is no difference between the two, except that they are on the forms of Tarun Bharat and Narkeshri Prakashan and in both of them Datta Meghe is shown as client, while Exhibit 123 shows N.S.U.I. as client on the format of Tarun Bharat. While the bill number is given 4178 on Exhibit 234, the office copy of the bill gives the number 4167, as in Exhibit 192. According to him, bill No. 234 was sent to Prasad Publicity by showing the name of N.S.U.I. as the client, and the bill bears number 4178. Exhibit 234 was sent

in July or August 1991. Before issuing this bill, another bill had been issued to Prasad Publicity, in the last week of May, 1991, and in it Datta Meghe had been shown to be the client, and that bill also bore bill No. 4178. Bill No. 234, with the change of the name, was issued on the request of Shastri of Prasad Publicity who said that he wanted the bill in the name of N.S.U.I. and not in the name of Datta Meghe, and so they put the number 4167 in their office copy when its turn came and issued Exhibit 234 and the earlier bill to Prasad Publicity by putting Sl. No. 4178, after dropping a few numbers because they wanted a bill urgently. In fact, bill No. 4178 had been issued to Anup Publicity on 18-5-1991 and the office copy of that bill was in the file of Tarun Bharat, Exhibit 606, and it bears the signature of Paunikar. It is apparent that Tarun Bharat's advertising office was not very careful about giving the numbers to the bills which they issued, that the bills were not issued from bound-books with printed bill numbers and the office copies of the bills were kept loose in a file.

156. In this context, it is noteworthy that Anant Shastri (PW-50), who alone would have been concerned had the bill been issued to Prasad Publicity, stated that he had parted with the original bills and handed them over to an unidentified person. Datta Meghe denies that he has anything to do with this transaction, except the talk he had with Laxman Joshi. According to Paunikar (PW-3), the name of Prasad Publicity was inserted in this bill, because they handled the advertising work for Datta Meghe's candidate. The question would be, if neither Prasad Publicity nor Datta Meghe gave the advertisement to Tarun Bharat, how was it that Tarun Bharat published an advertisement costing Rs. 7000, as a full page advertisement in its Election Special issue. Neither Paunikar, nor Bhojraj, had any talk directly with Datta Meghe in respect of any of these advertisements and Anant Shastri does not speak about having arranged the release of this advertisement by Tarun Bharat. The only basis, on which the advertisement must have been issued, would therefore, be the talk between Laxman Joshi and Datta Meghe. Paunikar's evidence showed that payment for this advertisement was received. Whatever confusion there may have been in the serial numbers of the bills and the dates of the bills on the three documents—Exhibits 192, 234 and 605, it is obvious that the advertisement was for promoting the candidature of Datta Meghe. If Prasad Publicity were to be left out, then normally it would be the name of Datta Meghe which would appear in the column of the name or authority of the person releasing the advertisement. Laxman Joshi gave evidence in a very upright manner and with great restraint and spoke about the talk that he had with the first respondent and stated that he did not know about the details as to who had instructed Prasad Publicity to give this advertisement, or who made the payment for it to Prasad Publicity. There was no denial by Datta Meghe that he had a talk with Laxman Joshi to give the advertisement, but on the other hand, an assurance by him that he would think about it. In these circumstances, only one inference is possible and it is that the advertisement in the special issue of Tarun Bharat dated 21-5-1991—Exhibit 221—was published at the instance of the first respondent Datta Meghe.

157. The learned Advocate General, however, urged that this was a clear case of purjury, because different formats were being used by Tarun Bharat. According to Paunikar (PW-3), the format of Tarun Bharat was not used after January 1991 and the bills were prepared in the format of Markesi Prakashan. Exhibit 192 is on the form of Markesi Prakashan, while Exhibits 234 and 605 are on the format of Tarun Bharat. However, regard must be had to the evidence of Bhojraj (PW-12) that the bill, which was asked for by

Anant Shastri with the changed name, was required urgently, and so another number was put, and he was given the copy. The change of name from Datta Meghe to N.S.U.I. was made by Kishore Pathak. In his cross-examination, he stated that Datta Meghe did not approach them for making all these alterations, and it was Shastri of Prasad Publicity who came. He could not say who changed the bill numbers from 4178 and 4167 in bill Exhibit 605. He denied the suggestion that bill Exhibit 234 was the genuine bill which was sent to Prasad Publicity, and Tarun Bharat fabricated Exhibit 605 as the office copy for this case. The learned Advocate General also referred to the sequence in which the witnesses came to be examined. Paunikar entered the witness-box on 18-3-1992 and the examination-in-chief was resumed on 23-3-1992, after an adjournment on 20-3-1992. After he was partly cross-examined on 23-3-1992, on 24-3-1992 he stated that he was not keeping well and was not in a position to give evidence and his evidence was, therefore, adjourned to 26-3-1992. The cross-examination was resumed on 27-3-1992, after the evidence of P.W.4 Ashok Jain was over, and the case was adjourned to 30-3-1992 for further cross-examination. PW-12 Bhojraj entered the witness-box on 20-4-1992. Bhojraj's name did not figure in the original list of the witnesses, but no objection was raised to his being examined as a witness, when the petitioners tendered his evidence. On 30-3-1992, at the request of the learned Counsel for the petitioners, the case was adjourned till the next day to enable him to check which xerox copies of the bills and receipts were not in conformity with the office copies with the witness, and Paunikar was directed to keep the office copies, which had been brought by him, until further orders. There seems to be nothing unusual about the bills exhibits 234 and 605 being on the format of Tarun Bharat, because the bill Exhibit 606, which came to be issued on 18-5-1991 to Anup Publicity showing the name of client as BJP, was also in the format of Tarun Bharat. The submission, that the very fact that forms of Tarun Bharat came to be used for preparing Exhibits 234 and 605, would show that the bills have been fabricated, does not appear to me to be well-founded. On the other hand, the part played by Anant Shastri of Prasad Publicity in getting the bills manipulated, because the name of Datta Meghe originally appeared on the bill in respect of the advertisement for the special issue of Tarun Bharat, appears to be quite consistent with his anxiety to have all the bills, which might be unfavourable to Datta Meghe, changed. I have no hesitation, therefore, in holding that the advertisement in the special issue of Tarun Bharat dated 21-5-1991 was given by the first respondent and it was he who incurred the cost Rs. 7,000 on that advertisement.

158. That brings me to the consideration of the four instances where the Release Orders and the bills both appeared in the name of the first respondent. Release Order No. 5097 (Exhibit 291) by Prasad Publicity was issued to Lokmat and Lokmat Samachar for insertion of three advertisements which are referable to Release Order Exhibit 291 for which the bill for Rs. 13,200 issued in the name of Datta Meghe's friends. These advertisements were published in the Lokmat and Lokmat Samachar on 21-5-1991 (Exhibits 83/34 and 83/35). Ashok Jain (PW-4) testified to this position. According to the practice followed by Lokmat Newspaper Private Limited, the names on the Release Orders are not mentioned in the bills, though there is a reference to the Release Order and its date in the bill issued, and such a mention in respect of Release Order Exhibit 291 is to be found on the left-hand top corner of Exhibit 292. Ashok Jain states that Datta Meghe did not have any account with them, during the period 25-4-1991 to 18-6-1991, nor did he give any advertisement during this period,

nor did he take responsibility for payment of the advertisements published. Lokmat Newspaper had transactions with Prasad Publicity long before the election and they are still continuing. There is no evidence to show that more than 25 signatories, who were the Principals and Professors had only lent their names for these advertisements and that the expenses of these advertisements were paid by the first respondent to Anant Shastri (P.W. 5), or to otherwise establish the connection of Datta Meghe with this advertisement.

159. In respect of the advertisement dated 20-5-1991, in Nav Bharat (Exhibit 87/9), there was no Release Order by Prasad Publicity. In the Bill (Exhibit 396) dated 30-3-1992 for Rs. 5,400, the addressee is named as Datta Meghe Election Ads. From the advertisement, it appears that it was issued by Nagpur Shahar Zilla Congress Committee announcing the programme of the meetings of Gulam Nabi Azad and Sanjay Khan. Merely because in the bill, the name of Datta Meghe Election Ads appears, no liability can be fastened on the respondent No. 1, when it is apparent that the sponsor was Nagpur Shahar Zilla Congress Committee, the party which had sponsored the candidature of the first respondent, and, as I have already observed, the party had collected the funds by contributions for bearing the expenses. The cost of this advertisement cannot also be included in the election expenses of the first respondent.

160. Third chart, giving some illustrative cases was produced on behalf of the petitioners. The first three items dealt with the advertisements in Janavad dated 10-5-1991 (Ex. 90/5); 13-5-1991 (Exhibit 90/6) and 18-5-1991 (Exhibit 90/8), which were released by YCCS, under the Release Orders Exhibit 149, dated 9-5-1991; Exhibit 151, dated 13-5-1991; and Exhibit 216, dated 14-5-1991. Exhibit 149 shows Nagpur City District Congress (I) as the client and the advertisement was designed to project that there was no alternative to Congress (I), with the photos of Rajiv Gandhi, first respondent and the symbol 'Hand'. The art work showed YCCS/DM 91 and Yeshwantrao Chauhan Social Forum, Nagpur. No receipt had been produced in respect of this advertisement.

161. In Exhibit 151, the client was named as Nagpur City District Congress (I) and the advertisement sought to project that for the security of the country, and its people, there was no alternative to Congress (I). In the bill Exhibit 118, dated 12-5-1991, the name of the client appeared as M/s. Dattaji Meghe, Nagpur and the agency as YCCS. The receipt Exhibit 119 issued by Janavad mentioned only YCCS. The advertisement in Janavad (Exhibit 90/8) was about Congress in Delhi, Bombay and Nagpur, with the photos of Rajiv Gandhi, Sharad Pawar, Datta Meghe and the symbol 'Hand'. In the Release Order Exhibit 216, the name of the client was shown as Nagpur City District Congress (I), and the bill Exhibit 123, dated 18-5-1991, while showing the agency as YCCS, showed Nagpur City District Congress (I) as the client.

162. Shioram Shastri (P.W. 2), the advertising Consultant for Daily Janavad, states that when the advertisements are to be printed in pursuance of the

Release Orders, the information as per Release Orders is noted in the Schedule Register and he had no personal knowledge about the transaction between the persons projected as the customer and the advertising agency, apart from what is mentioned in the Release Order. All the payments in respect of the advertisements released by YCCS or Prasad Publicity had been made by those agencies in respect of both, the Release Orders and the material already provided. The evidence of Shriram Sastri (P.W. 2) is, therefore, not useful for showing what concern the first respondent had with this transaction and, as already pointed out, the evidence of Madhukar Khisti (P.W. 55) does not advance the case any further.

163. I have referred to the evidence that a large amount had been collected by Congress by raising contributions from which the cost of advertisements could be met, and in these circumstances, more positive evidence was necessary to show that the first respondent had given his own money to the party for meeting the expenses of advertisements. In Dr. P. Nal'a Thampy Terah v. Union of India (AIR 1985 Supreme Court 1133), it was pointed out :

"It is only if the expenditure is in fact incurred or authorised by a political party or any other association or body or persons or by an individual (other than the candidate or his election agent) that the Explanation will come into play. The candidate cannot place his own funds in the power or possession of a political party, or a trade union or some other person and plead for the protection of Explanation 1. The reason is that, in such a case, the incurring of the expenditure by those others, is a mere facade. In truth and substance, the expenditure is incurred by the candidate himself because the money is his. What matters for the purpose of Explanation 1 is not whose hand it is that spends the money. The essence of the matter is, whose money it is."

In respect of the three items, to which reference has been made above, the material *prima facie* indicates that it was the political party which had issued the advertisements and paid the funds, and there is no material to show that it was the first respondent's money that the party had spent.

164. In the issue of Lokmat dated 13-5-1991 (Ex. 83/20), an advertisement regarding the security of the country and the people, as mentioned earlier, appeared. The advertisement was released by YCCS and bore the Internal Release Order No. 58051 of Lokmat as mentioned in the bill Ex. 259 dated 13-5-1991 for Rs. 4,259.00. The art work shows that the advertisement was issued with the courtesy of Ghantanath, Nagpur. There is no evidence to show that the first respondent was the person who had given his money for this advertisement.

165. In the issue of Hitvada dated 12-5-1991 (Ex. 91/5), an advertisement showing that there was no alternative to Congress appeared and it was routed through YCCS under the Release Order Exhibit 552 dated 9-5-1991, for which the bill Exhibit 553 and

receipt Exhibit 554 dated 12-5-1991 were issued, and they show the name of the client as Nagpur City District Congress (I) Election. In the issue of Hitvada dated 15-5-1991 (Exhibit 91/6), an advertisement invoking the blessings of Chhatrapati Shivaji was published with courtesy of Indira Brigade, which named Nagpur City District Congress as the client. The advertisement in the issue of Hitvada dated 20-5-1991 (Exhibit 91/7) was released by YCCS under the Release Order dated 17-5-1991 (Ex. 562) and for it the bill and the receipt dated 20-5-1991, Exhibits 563 and 564 were issued showing the courtesy of Sons & Farmers Association, Nagpur, projecting Congress in Delhi, Bombay and Nagpur. In the issue of Hitvada, dated 21-5-1991 (Exhibit 91/8), the advertisement released under the Release Order (Ex. 565) dated 20-5-91, for which the bill Exhibit 566 and receipt Exhibit 567, dated 21-5-1991 had been passed. The advertisement proclaimed that only two days were left for election. The documents were in favour of Nagpur City District Congress (I).

166. In the issue of Tarun Bharat dated 15-5-1991 (Exhibit 88/10), the advertisement released by YCCS showing the name of the client as Nagpur City District Congress was published under the Release Order Ex. 183, dated 14-5-1991, for which the bill Exhibit 184, dated 21-5-1991, and receipt Exhibit 185 had been passed. These documents also show the name of the client as Nagpur City District Congress (I), and as already observed, Padmakar Paunikar (P.W. 3) and Arun Bhopraj (P.W. 12) had no personal knowledge about who the real client of YCCS was.

167. The advertisement in the Daily Rashtradoot dated 11-5-1991 (Exhibit 86/6) was released by YCCS under the Release Order Exhibit 597 dated 9-5-1991 covered by the bill (Exhibit 340) and receipt (Ex. 341) dated 13-5-1991. The name of Datta Meghe appeared as client in the release order signed by Madhukar Khisti (P.W. 55). There is no other evidence to show, except the evidence of Madhukar Khisti (P.W. 55), that he had personal knowledge about Datta Meghe's connection with YCCS. This advertisement was printed with the courtesy of Super Steel Furniture. The same holds good for the advertisement dated 18-5-1991 in Rashtradoot Exhibit 86/9 released by YCCS under the Release Order Exhibit 344 and covered by the bill Exhibit 345 dated 15-5-1991, and the receipt Exhibit 346, dated 14-5-1991. The client was shown there as Nagpur City District Congress, and the Release Order was with the courtesy of Bhartiya Sher Sanghatna.

168. The learned Advocate General urged that no Release Order issued by the YCCS, which has not been signed by Khisti bears the name of Datta Meghe as the client and the other Release Orders, which were signed by Thakre, Andhare and Despande do not bear Datta Meghe's name. Having regard to the evidence of Madhukar Khisti (P.W. 55), no inference could be raised that first respondent Datta Meghe was responsible for the advertisements which were published in the name of the YCCS and that he had given the money for issuing those advertisements.

169. Though there is no direct evidence to show how the first respondent was concerned with these

advertisements, the learned Counsel for the petitioners urged that the very fact, that identical advertisements came to be issued simultaneously in different newspapers on the same dates or on different dates, was a ground good enough for raising the inference that there was someone who was pulling the strings and it could be none else besides the first respondent. It is difficult to accept this submission because besides the first respondent, there could be the party which had sponsored, him as its candidate who could have seen to it that the advertisements were published, and may be the different names came to be mentioned as the persons by whose courtesy the advertisements came to be published, from the subscriptions or the contributions which they raised, and these associations, persons, or concerns wanted to project themselves also by these advertisements besides the candidate and the party. The submission was, it could not be YCCS which could have done this, because the agency, unless it were paid for the purpose, would not go about seeking persons to lend their names for the advertisements. Though that possibility existed, the petitioners would not be absolved from discharging the burden which lay on them of showing that it was the first respondent's money that was used by the party and the other persons concerned in giving these advertisements.

170. 31-7-92 : The advertisements dated 19-5-1991 in Lokmat and Lokmat Samachar (Exhibits 83/30 and 83/31) were the subject matter of the Release Order Exhibit 278 dated 18-5-91, issued by Prasad Publicity, in which the name of the client was mentioned as Nagpur Purogami Yuwa Sangharsh Samiti. The bill (Exhibit 279) issued by Lokmat referred to this Release Order and obviously the payment was to be received from the person named as client in the Release Order (Exhibit 278). P.W. 4 Ashok Jain states that the amount Rs. 3,825 under this bill was received on 20-5-1991 by cheque from Prasad Publicity. No question was put to Anant Shastri (P.W. 5) about the source from which this amount was received for being paid to Lokmat and Lokmat Samachar. Merely because only one earlier advertisement was found to have been given in the name of Datta Meghe by Prasad Publicity to Tarun Bharat on 28-4-91, it would not follow that all the other advertisements, with which different persons were concerned, also flowed from the first respondent. There is no evidence to show that it was the first respondent's money which was used for the advertisement inserted by Nagpur Purogami Yuwa Sangharsh Samiti for promoting his candidature. The responsibility for these advertisements cannot, therefore, be placed on the first respondent.

171. Three more advertisements were published by Nav Bharat, namely, one in Exhibit 87/7 dated 14-5-1991 issued by Prasad Publicity naming Scooter Rally as the client, under the Release Order dated 13-5-1991-Exhibit 386. The bill in respect of this advertisement was Exhibit 388, dated 16-5-1991 issued to Scooter Rally for the cost of advertisement inserted by Prasad Publicity. According to Narayan Gwalani (P.W. 6), the bill was issued in the name of Prasad Publicity upon its instructions and the payment was received on account. The two other advertisements are dated

19-5-1991 (Exhibit 87/8), and they were inserted under the Release Order Exhibit 389, dated 18-5-1991 by Prasad Publicity and the instructions were that they were part of Datta Meghe Publicity Programme. The clients were mentioned as Nagpur Shahar Zilla Indira Congress. The bill for one of the two advertisements was Exhibit 390, dated 28-5-1991 and the other Exhibit 391 dated 27-5-1991. Exhibit 390 was addressed to Nagpur Shahar Congress (I), and Exhibit 391, to Republican Party of India. According to Narayan Gwalani (P.W.6), the payment was received from Prasad Publicity on running account. It is obvious that in this transaction, two political parties, i.e. Nagpur City District Congress and Republican Party of India were involved. Merely because the advertisements were a part of the advertising programme for the first respondent's candidature, it would not follow that the money for these advertisements came from the first respondent. No question was put in this respect to Anant Shastri (P.W.50), who was the only person who would have been in the position to say how the money came. Prasad Publicity was acting not only for the first respondent but also for the Congress(I) Party, and from the evidence of Anant Shastri, it is clear that it had received payments from Parshionikar who was in-charge of the election of the first respondent and acted on behalf of the Congress Party. In the absence of positive and cogent material to show that the money came from the first respondent, it is not possible to accept the contention that the money for these advertisements came from the first respondent.

172. The advertisement complementing the first respondent appeared in the issue of Nav Bharat dated 24-4-1991 (Exhibit 87/1). The bill Exhibit 377 was for Rs. 2,940/- in the name of Vidarbha Nav Yuwak Krantikari Sangathan, Nagpur and the receipt Exhibit 378, was issued in the name of Nagpur Shahar Zilla Indira Congress through M.M.M. for Rs. 25,000/- In Nav Bharat dated 30-4-91 (Exhibit 87/2), an advertisement appeared, under the heading—"INDIRA CONGRESS KO JITAYEN". The bill Exhibit 379 was issued in the name of Rashtriya Krantikari Sangharsha Samiti for Rs. 4,200/- In Nav Bharat dated 1-5-91 (Exhibit 87/3), by an advertisement vote was solicited by the first respondent and the bill Exhibit 380 was issued in the name of Rashtriya Jan Vikas Kalyan Mahamandal, for Rs. 4,200/- Receipt Exhibit 372 covered these two bills also. All the three advertisements are in the names of the persons whose names appeared in the Bills Exhibits 377, 379 and 380 as publishers.

173. Narayan Gwalani (P.W. 6) stated that the Congress had no running account with Nav Bharat. He could not say who had signed the order forms for these three advertisements on behalf of the three organisations and who had actually come to give the advertisements. Manmohan Maheshwari was employed with Nav Bharat as News Editor. Whenever the advertisements are received, they are entered in a register maintained by Nav Bharat, called 'R. O. Input Register', but they have not preserved it. It contains name of the party, date of publication, serial number, and release order number and the name of the agency. It is in the form of a bound-register.

Besides this, there is no other record pertaining to the advertisements. The entries in the Ledger are made about 2 or 3 days after the transaction. According to Gwalani, the facility of credit is not given to unknown person, and if some unknown person wants credit, the matter is referred either to him or to any other senior person. Though there was no account in the name of Nagpur Zila Shahar Congress Committee, there was one of the name of Datta Meghe Ads Account, and he had decided to allow that account to be opened, because he had been informed on telephone by Nagpur District Shahar Congress Committee to give credit to Rashtriya Krantikari Samiti, Vidarbha Nav Yuval Krantikari Sanghatan, Rashtriya Jan Vikas Kalyan Mandal & Ramdas, Rajaram Devawale, in Datta Meghe Election Ads Account. He could not tell the name of the person who had given these instructions. Receipt dated 17-5-1991 (Exhibit 406) was signed by Kulkarni, while receipt dated 20-5-1991 and 4-6-1991 (Exhibits 407 and 408) were signed by Chandak, and they were for Rs. 20,000/-, 25,000/-, and 25,000/- respectively, from Receipt Book No. 5. The contention was that from Exhibit 406 the words Datta Meghe had been scored and the name of Nagpur Shahar Zilla Indira Congress Committee was added; in Exhibit 407, the mention Datta Meghe Election Act. was made below the carbon writing Nagar Congress Committee (I). There were two more receipts Exhibit 409 dated 17-6-1991 for Rs. 50,000/- and dated 10-6-1991, for Rs. 15,000/- (Exhibits 409 and 410), which were signed by Chandak. Two receipts dated 4-7-1991 for Rs. 34,000/- and Rs. 30,000/- were signed by Kulkarni, and they were all in favour of Nagpur Shahar Zilla Congress Committee. Gwalani states that he saw receipt Exhibit 406, after he received summons to give evidence, and the changes in the receipt Exhibit 406 regarding the name were made by Kulkarni, but he could not say when they were made. In his cross-examination, he stated that the two writings in the receipt Exhibit 406 were in the same handwriting, that being of Kulkarni. Exhibit 406/A, which is the original receipt produced on behalf of the first respondent, corresponding to Exhibit 406, shows that the words 'Datta Meghe' were deleted in red ink Samar Sare (Ex. W. 7), who worked as Manager Accounts with Nav Bharat, stated that the entries in the ledger used to be made two or three days after the transaction, if the transaction were of cheque, but if cash was received, the receipt was issued immediately and an entry was made in annexure to the Cash Book. For cash, receipts used to be issued by Amit Chandak and C. K. Kulkarni in routine course, and they used to approach him only in the case of difficulty.

The M.M.M., according to him, referred to the name of Manmohan Maheshwari, Editor of Nav Bharat, but he could not say when the writing 'through M.M.M.' was made and it was not made after consulting him. With regard to receipt Exhibit 406, he stated that it was issued first in the name of Datta Meghe and the correction came to be made under his instructions, because it was represented to him that the payments were made by Nagpur Shahar Indira Congress Committee and not by Datta Meghe, and this was done one or two days after the receipt was written. Though it was at the instance of Cashier Kulkarni that the correction was made, the petitioners did not examine Kulkarni and according to Sare, there was no reason for him to disbelieve Kulkarni when he permitted the

corrections to be made. The words 'Datta Meghe Election Advertisements' in Exhibit 407 were in the handwriting of Amit Chandak and they were added two or three days after the receipts were issued for identifying the account in which the credit should go. He could not identify the person in whose handwriting the words 'Datta Meghe Account' appeared in Exhibit 409, though the words 'Datta Meghe Account' in Exhibit 410 were in the handwriting of Chandak and they were also written to identify in which account of the Ledger the credit should go. From his cross-examination, it is clear that Nav Bharat did not have any personal account of the first respondent No. 1, in their Account Books, and except Datta Meghe Election Advertisements Account, there was no other account in Datta Meghe's name.

174. Pannalal Poddar (P.W.8), who was an Assistant in the Advertisement Department of Nav Bharat, stated that he used to maintain the subsidiary ledger in the Advertisement Department, and at page 495 of the Ledger (Exhibit 441) was the account of Vilas Muttemwar; at page 496, was the Account of Datta Meghe Election Advertisement, and at page 497 was Prafullabhai Patel Election Ads. Account. According to him, out of the heading, only the words "Datta Meghe, Nagpur" were in his handwriting, and the Election Ads Account was not in his handwriting. He could not say who wrote the words "Election Ads Account". He further stated in his cross-examination that for Vilas Muttemwar had there was only the Election Account with the Newspaper and all the bills were paid by different Congress Committees and not by any of the candidates, viz., Prafullabhai Patel or Vilas Muttemwar personally.

175. P.W. 6-Narayan Gwalani's cross-examination showed that the first respondent had not given any of the advertisements, nor had he taken the responsibility for making the payments, and the Code Number allotted to Nagpur Shahar District Congress(I) Committee was M 00042. The learned Counsel for the petitioners urged that the very fact, that there was a confusion in the code numbers, would show that the attempt of the officials of Nav Bharat was to suppress the real transaction and that, in fact, the account, which has been disguised later by changing the writing, was an attempt to show it as Datta Meghe Advertising Account, when it was Datta Maghe's personal account. I have been taken through the relevant entries in the Register. At page 568 of Exhibit 439, the name of Nagpur Shahar Zilla Congress Committee appeared against M 00042. It is worthy of note that according to Pannalal Poddar (P.W. 8), the entries in subsidiary Ledger were made on the basis of annexures to the Ledger kept by the Account's Department, and not from the receipts, and the code number against the receipt Exhibit 378 was mentioned as A 0041, and it was wrong and, therefore, the correct number was mentioned at the top of the page No. 496 (Exhibit 441) as M 0042. It is obvious that there was an error in mentioning the code number and no argument can, therefore, be founded that there was a separate account of the Shahar Congress Committee and that Datta Meghe had personally a different account with Nav Bharat. Considering that Prafullabhai Patel and Vilas Muttemwar's names appeared in the register and that none of them had personal accounts, but the

accounts were in respect of the funds made available by the respective Congress Parties, there is no reason to hold that the first respondent had been treated differently by Nav Bharat. I, therefore, hold that the expenses incurred on all these advertisements with Nav Bharat cannot be said to have been incurred by the first respondent.

176. The next item to be considered in the advertisement dated 21-5-1991 in Nav Bharat Exhibit 87/10 which was released by Nagpur Shahar Congress Committee. The bill for it (Exhibit 403) was issued to Nagpur Shahar Indira Congress on 28-5-1991. The Advertisement purports to show that it was inserted at the behest of Nagpur Rural Wholesale and Retail Kerosene Association. According to Narayan Gwalani (P.W. 6), the payment was received for this advertisement from Nagpur Shahar Indira Congress. It is, therefore, clear that the expenditure for this advertisement was not borne by the first respondent.

177. The advertisement dated 20-5-1991 in Rashtradoot Exhibit 86/14 shows that it was given by National Students Union of India, as mentioned in the bill Exhibit 360, dated 21-5-1991, apparently with the courtesy of the Vidarbha Professor Club & NSUI. Kalyan Subramaniam Aiyer (P.W. 5) states that the payment for this bill has not so far been received. According to Aiyer, the advertisement was inserted on telephonic instructions, but he could not say who gave the instructions, and these details had not been given in the programme register which he maintained. There is no material on record to show that the money for this advertisement came from the first respondent, and it cannot be included in his election expenses.

178. Two advertisement were inserted in Janavadi—one in the issue dated 26-5-1991 (Exhibit 90/9) and the other on 10-6-1991 (Exhibit 90/12), and they appeared to have come from one Rajiv Pawar. The advertisement in Exhibit 90/9 gives the name of the publisher as Datta Meghe Mitra Pariwar, extending the invitation to attend the meeting to be addressed by Dilip Kumar in support of Datta Meghe. Exhibit 125 is the carbon copy of the bill dated 20-4-1991 showing the name of the agency Shri Pawar Nagpur Nagar Shahar Zilla Congress Committee, and client, as Shri Datta Meghe Mitra Pariwar. Exhibit 124 is a manuscript writing giving an idea of art-work for the two meetings, and on the top thereof, appears a writing to the effect that it was based on a phone-call by Pawar from Meghe Shivram Shastri, the Advertising Consultant of Janavadi, states that no Release Order was issued for this advertisement, but he received the matter to be published from one Mr. Pawar. He did not know his full name. It is usual to paste a photograph and prepare a layout, when the matter is received, and there was nothing in the matter to show who had prepared the layout, but it was prepared by a clerk with the help of the Pasting Department. The bill was prepared in the name of Pawar's Nagpur City District Congress for Rs 1,800/- In his cross examination he stated that the work of pasting was not done under his supervision, and he had no personal knowledge about the type of the matter supplied by that client, and he had had no personal know-

ledge about the matter Exhibit 12. He could not say if the portion "मेरे पांच करों" परार काम" was in the original matter supplied, or was inserted afterwards as the matter was received from the screen. There is nothing in the writing or the ink which would suggest that this sentence might have been introduced afterwards, though there is no evidence to show, in whose handwriting the matter had been prepared, but it was on this basis of this matter that the advertisement came to be issued. The receipt (Ex. 126) dated 4-7-91 was issued in the name of Nagpur Shahar Congress Committee. There is no material on record to show, who the Pawar mentioned in Exhibit 124 was, and what relationship he had with the first respondent and that he had been authorised by the first respondent to incur expenditure on his behalf, and that he was not the person who could have acted for Nagpur Shahar Congress Committee, in whose name the bill Exhibit 125 and the receipt Exhibit 126 stand.

179. The learned Counsel for the petitioners urged that Pawar, whose name appears in Exhibit 124 would be the same person whose name is Rajiv Pawar, but in the absence of reliable material to show, it would not be safe to infer that the person named in the advertisement was one Rajiv Pawar. Since the expenditure has been shown directly to have been borne by the Congress Committee, and in the absence of evidence to show that the first respondent made his fund available to the Congress Committee, this item of Rs. 1,800/- cannot be included in the election expenses of the first respondent.

180. With regard to the advertisement in Janawad dated 10-6-1991 (Exhibit 90/12), which was published on the basis of the matter Exhibit 134, the bill Exhibit 135 came to be issued on 10-6-1991 for Rs. 3,600/- The advertisement shows that it was published by Advocate T. S. Tripude, the Additional National Secretary of Republican Party of India, projecting the alliance of Congress (I) and RPI(K), in support of the candidature of the first respondent. The matter Exhibit 134 does not bear the name of Rajiv Pawar, but the Bill Ex. 135 shows that the client was Advocate T. S. Tripude, Additional General Secretary, and in the column of agency, the name of Rajiv Pawar was mentioned. Shivram Shastri (P. W. 2) states that the payment for this bill had not been received. There is no cross-examination of Shivram Shastri about the identity of Rajiv Pawar.

181. Girish Vyas (P. W. 47) states that he had an occasion to meet Narayan Ahuja, who is employed in Datta Meghe Polytechnic College. Rajiv Pawar is a teacher in New English High School, Mahal, and he runs a newspaper and worked for Datta Meghe during the last Parliamentary election. According to him, both of them are not connected with any political party, nor are they office-bearers of any political party. It is apparent that Girish Vyas was an active worker of the BJP, and if any person were to be connected with a political party, he was likely to know about him. In his cross-examination, he stated that he did not know where Narayan Ahuja resides, but Raju Pawar resided in North Nagpur. He could not say what work Narayan Ahuja does in Datta Meghe Polytechnic College, but he had seen Narayan Ahuja and had seen Rajiv

Pawar in Nav English High School. He asserted that they were not the workers of any political party from his personal knowledge. Gov Awari (P. W. 45), who was the President of Nagpur Nagar Congress Committee in 1991, who would have normally known about them, states that he does not know Narayan Ahuja and Rajiv Pawar, and he could not recollect if Narayan Ahuja and Rajiv Pawar were the office bearers of Congress Committee in 1991. First respondent Meghe admitted that he knew Narayan Ahuja and Rajiv Pawar and, according to him, they are the workers of Congress (I), but he had not instructed them to issue advertisements and he had no talk with them till the elections were completed. Meghe denied that Rajiv Pawar and Narayan Ahuja were engaged by him to work in Sharda Devi Mangal Karyalaya. According to him, Rajiv Pawar and Narayan Ahuja were amongst the counting agents who had been engaged by Sudhakar Deshmukh, and he had known Narayan Ahuja for two or three years and he might be an employee of the institution run by Nagar Yuwak Shikshan Sanstha.

182. It is noteworthy that though the petitioner No. 1 Bapat was aware of the advertisements, which had been issued in several newspapers and was aware of the names of Rajiv Pawar and Narayan Ahuja which figured in the advertisements, there was no pleading about their association with the first respondent, if their actions were sought to be held against the first respondent; nor were they summoned as witnesses. The name of Rajiv Pawar, as observed above, appeared in respect of the advertisements given by T. S. Tripude, and not in respect of any advertisement given by the first respondent. Merely because Rajiv Pawar was known to the first respondent, no inference could be drawn that he acted as the agent of the first respondent with his consent and that he had been authorised to incur the expenditure of the advertisement. As observed in Sri Harsingh Charan Mohanty, v. Surendra Mohanty (AIR 1974 Supreme Court 47), consent or agency cannot be inferred from remote causes. Consent cannot be inferred from mere close friendship or other relationship or political affiliation. However, close the relationship, unless there is evidence to prove that the person publishing or writing the editorial was authorised by the returned candidate or he had undertaken to be responsible for all the publications, no consent can be inferred. The amount of Rs. 3,600 incurred on the advertisement Exhibit 90/12 cannot, therefore, be included in the election expenses of the first respondent.

03-08-1992 :

183. Two advertisements came to be published in Lokmat (Exhibit 83/16) and Lokmat Samachar (Exhibit 83/17), on 11-5-1991, and the bill Exhibit 254 was issued on 11-5-1991 for the consolidated amount of Rs. 14,000/- for four advertisements, including those two issues. The bill shows the name of Sharad Pawar Mitra Mandal as the publisher, and the receipt Exhibit 255 for Rs. 10,000 was issued against bill No. 6615 Exhibit 254, in the name of Sharad Pawar Mitra Mandal. The two advertisements (Exhibits 83/16 and 83/17) purported to project that there is no alternative to Congress (I). Ashot 1-4 (P.W. 4) stated that the advertisement (Ex. 83/16) was given by Narayan Ahuja and Sharad Pawar

Mitra Mandal. The advertisements in Lokmat and Lokmat Samachar (Exhibits 83|18 and 83|19), dated 12-5-1991, were given under the bill Exhibit 257, but the bill, which was a consolidated bill for six insertions for the amount of Rs 9,900, does not mention the name of Narayan Ahuja. The receipt Exhibit 258 shows that the amount of Rs. 9,900 was paid on 20-5-1991 by Sharad Pawar Mitra Mandal. In his cross-examination, the witness stated that all the advertisements given by Sharad Pawar Mitra Mandal were to be operated by Narayan Ahuja and all those advertisements were given by Narayan Ahuja and it was he who made the payments for all those advertisements. The other advertisements which were given by Sharad Pawar Mitra Mandal are to be found in the issue of Lokmat Samachar dated 13-5-1991 Exhibit 83|21 and that name appeared in the bill Ex. 261; Lokmat and Lokmat Samachar, dated 15-5-1991, (Exhibits 83|24 and 83|25) referable to bill Exhibit 269, dated 15-5-1991 for the value of Rs. 1,500 for which the receipt Exhibit 270, dated 21-5-1991, was issued; Lokmat dated 18-5-1991 (Exhibit 83|12) referable to the bill Exhibit 273, dated 18-5-1991; and Lokmat Samachar, dated 18-5-1991, (Exhibit 83|29) referable to bill Exhibit 273 and receipt Exhibit 274. None of these bills and receipts bore the name of Narayan Ahuja.

184. From the cross-examination of Ashok Jain (P.W. 4), it is apparent that they had maintained separate accounts of the Advertising Agencies which were giving advertisements, and code numbers allotted to each Advertising Agency were mentioned in the account maintained for each Agency. Code No. 99J 553|31 was allotted to Nagpur Nagar Congress Committee and it was to be operated by Vasant Parshionikar. These advertisements were given by Vasant Parshionikar and he made payments for those advertisements. The code number allotted to Sharad Pawar Mitra Mandal was 99J 554|31, and it was to be operated by Narayan Ahuja. He gave all these advertisements and made payments for them. Yuwak Congress Committee had Code No. 99J 558|31 and it was operated by Binnu Pande and he made payments for them. The code number for Mahila Congress Committee was 99J 559|31 and it was operated by Sushila Jadhav. She had given the advertisements and made payments on that account. The code number for Indira Brigade was 99J 562|31 and it was operated by Sirish Dupaliwar. The code number for Sarva Dharma Sambhav Sanghatna was 99J 460|31 and Sudhakar Bhasme operated that account and he had made payments and the balance had been cleared and the bills and the receipts had been entered in the accounts which had been maintained.

3-8-1992 :

185. As already stated above, the advertisement in Lokmat (Ex. 83|16) and Lokmat Samachar (Exhibit 83|17) purported to project that there is no alternative to Congress (I) and the name of the publisher was mentioned as Datta Meghe Mitra Mandal, Nagpur, in both these advertisements. In the written-statement also, it was alleged that these advertisements were published by Datta Meghe Mitra Mandal. The first respondent Meghe stated that he did not know what Datta Meghe Mitra Mandal meant, and could not identify any one from Sharad

Pawar Mitra Mandal or Datta Meghe Mitra Mandal. These two were not the advertisements for which the party, i.e., Congress (I), either Grahmin or Shahar, are said to be responsible, and it is not the version of Ashok Jain (P.W. 4) that the Congress Committee made payments for these two advertisements. In the issue of Lokmat dated 12-5-1991—Exhibit 83|18, the advertisement seeking vote for Datta Meghe, with his photographs and the symbol 'Hand' appeared, and it bears mention that it was published by Datta Meghe Mitra Mandal. In the issue of Lokmat Samachar, dated 12-5-1991 (Exhibit 83|19), an identical advertisement in Hindi was published. There also the name of the publisher is shown as Datta Meghe Mitra Pariwar. In the issue of Lokmat Samachar dated 13-5-1991 (Ex. 83|21), the election programme of the first respondent has been given, and this is so also in the advertisement dated 14-5-1991 in Lokmat (Ex. 83|21); Lokmat Samachar, dated 14-5-1991 (Ex. 83|22); Lokmat, dated 15-5-1991 (Ex. 83|24); Lokmat Samachar, dated 15-5-1991 (Ex. 83|25). Lokmat dated 18-5-1991 (Ex. 83|28); and Lokmat Samachar, dated 18-5-1991 (Ex. 83|29). These advertisements gave the election programme of the first respondent on different dates. There is no mention in any of these advertisements giving the election programme that they were inserted by Sharad Pawar Mitra Pariwar.

Ashok Jain (P.W. 4) states that the advertisement in Lokmat dated 19-5-1991 (Ex. 83|30) and the advertisement in Lokmat Samachar dated 19-5-1991 (Ex. 83|31) were inserted by Narayan Ahuja, for which the bill for Rs. 2,000 (Ex. 282) came to be issued in the name of Sharad Pawar Mitra Mandal, and the amount was received under the receipt, dated 6-6-1991 (Exhibit 283) from Sharad Pawar Mitra Mandal. These advertisements were introduced by Narayan Ahuja.

186. The learned Counsel for the petitioners urged that it was the first respondent alone, who stated that Narayan Ahuja, who is said to have given all these advertisements on behalf of Sharad Pawar Mitra Mandal, belonged to Congress Party, while Gev Awari (P.W. 45) was not able to identify him as a Congress worker and Girish Vyas (P.W. 47) stated that he did not belong to any political party. He was an employee of one of the institutions run by the first respondent. The learned Advocate General urged that there was no material on record to show, whether Narayan Ahuja was a man of means and his financial status and, therefore, no inference could be raised that Narayan Ahuja would not have been in a position to provide the funds for these advertisements. Considering that Ashok Jain (P.W. 4) has stated that all these advertisements came from Narayan Ahuja for Sharad Pawar Mitra Mandal and that the cost of inserting these advertisements was more than Rs. 20,000/-, it would be obvious that Narayan Ahuja, as an individual, would not have been the person who could have provided the money required for giving the advertisements and making the payments. The learned Advocate General pointed out that the advertisements were not given by Narayan Ahuja individually, but by Sharad Pawar Mitra Mandal. I have already pointed out that even the first respondent was not in a position to say what this organisation was and was not in a position

to name any individual or the person concerned with Datta Meghe Mitra Mandal. Going by his own admission, he had not provided funds though he had lent his car for the election campaign of the second respondent Banwarilal Purohit, when he was a Congress(I) candidate, at the earlier Lok Sabha election, it is unlikely that a party member, without much of a stake in the election not been shown to be well-placed financially, would think of parting with a large sum of Rs. 20,000/- . It is in this context that the inconsistency in the written-statement and the mention in the concerned advertisements about who the publisher was that assumes importance. No nexus between Datta Meghe Mitra Mandal and Sharad Pawar Mitra Mandal has been shown to exist, except the likelihood that they were both inclined to espouse the cause of the first respondent during this election, and that is too fanciful a possibility to be taken into consideration. None of the witnesses from Congress Party stated that they had inserted the advertisements either in the name of Sharad Pawar Mitra Mandal or in the name of Datta Meghe Mitra Mandal. On the other hand, the first respondent Meghe stated in para-51 of his deposition, as follows :—

"During this election, we did door to door canvassing, use of posters, holding of meetings. It was not possible for me to visit every place in the constituency. We used to get the typing done for preparing the programme of the meetings, issuing press-notes, issuing the circulars about the meetings. I got xeroxing done on some occasions and typing on others."

The touring programme for the election by the first respondent was his own prime concern, and some of the advertisements for that programme had been given, for instance, in Lokmat Samachar, dated 13-5-1991 (Ex. 83/21) and dated 14-5-1991 (Exhibit 83/22), even without the symbol, and it is obvious that the first respondent, by these advertisements, was being projected individually and that was to be his individual tour-programme for the purpose of election.

187. The learned Advocate General urged that it was for the petitioners to examine Narayan Ahuja to show the source from which he found the funds, and in the absence of his being examined as a witness, an adverse inference against the petitioners would be justified. The enquiry, however, is to be directed to find out whether the evidence, which has already been led, is or is not sufficient for inferring that Narayan Ahuja, when he purported to act for Sharad Pawar Mitra Mandal or Datta Meghe Mitra Mandal, was acting on his own or for the first respondent. Considering the admission of the first respondent that he used to issue the press-notes regarding his election programme and the fact, that all the advertisements in the name of Sharad Pawar Mitra Mandal came to be inserted by Narayan Ahuja who was close to the first respondent without any apparent party affiliation, the one and the only inference would be that Narayan Ahuja was acting for and on behalf of the first respondent and for his benefit. The subterfuge adopted by getting a person who had no financial or political background, for representing organisations, the existence of which is so doubtful, is entirely unconvincing. It, therefore,

hold that all the advertisements, which were published in the name of Sharad Pawar Mitra Mandal, were published at the behest of the First respondent and he had paid the amount for those advertisements. Out of the amount of Rs. 9,900/-, which is the amount mentioned in the receipt Exhibit 258, the pleading is restricted to the amount Rs. 1,600/-, in respect of the items published. The total amount of expenditure on all these advertisements, which has been suppressed by the first respondent and should have been included in his return of expenses filed before the District Election Officer, thus, comes to Rs. 9,100/-, and it shall have to be included in the amount of his election expenses.

188. In the issues of Nagpur Times and Nagpur Patrika, dated 7-6-1991 (Exhibits 84/13 and, 84/14), advertisement under the heading जल कर्या (false sympathy), appeared with the photograph of the first respondent and the symbol 'Hand', the reference being that since during the past ten years, nothing was done by the person who was a Member of the Parliament, for solving the problem of water shortage at Nagpur and for ensuring supply of water in summer, the respondent No. 1 should be elected. The first respondent stated in his evidence that the obvious reference in these advertisements would be to the respondent No. 2 Banwarilal Purohit who was a Member of the Parliament for ten years, prior to the last Lok Sabha election. The advertisement appears in the name of a well-wisher. The bill for these two advertisements—Exhibit 474—is drawn by the Nagpur Times/Patrika combined to Nitin Furniture on 30-6-1991, the bill number being CC 48234 for Rs. 15,000/- . The name of Nitin Furniture is not disclosed in the advertisements, but the receipt Exhibit 475 dated 14-9-1991 is drawn in the name of M/s Nitin Furniture, Nagpur and the code number has been changed to 479 and the previous code number has been undecipherably scored out. There are two advertisements dated 8-6-1991 in Nagpur Times (Exhibits 84/14 and 85/15) for which bill (Exhibit 476) is drawn in the name of Punjab Wood Crafts for Rs. 15,000/-, the bill number being CC 48234 and the receipt (Exhibit 477) for Rs. 15,000/- is dated 14-9-1991. The receipt shows the name of M/s. Punjab Wood Craft and the code number given is LC PO 482, after undecipherably scoring out the previous code number. The advertisements dated 9-6-1991 in Nagpur Times Exhibit 84/15 and Nagpur Patrika Exhibit 85/16 also appeared in the name of well-wisher with the same contents and the heading as the four advertisements referred to earlier. The bill Exhibit 478, dated 30-6-1991 gives the name of Ranjit Engineering Works and the bill No. CC 48235 for Rs. 15,000/- . The receipt Exhibit 479 refers to bill No. 48235 and gives the code number as LCR 0436, after undecipherably scoring out the previous code number,

189. The issues of Nagpur Times and Nagpur Patrika dated 10-6-1991 (Exhibits 84/16 and 85/17) published the advertisements under the heading जल कर्या (enough by now), also with reference to water scarcity, purported to be given by a well-wisher. The bill No. CC 48235, however, has been

prepared in the name of Talmale Bandhu on 30-6-1991 and the receipt is dated 14-9-1991 in favour of M/s Talmale Bandhu. It mentions Code No. LC 0309, after undecipherably scoring out the previous code number.

190. Santosh Sarode (P. W. 9), who is the Manager, General Co-ordination, working with the Nagpur Times, stated that the advertisements were received in the Advertisement Department by Mrs. Sainathan and Khamborkar, and the Managing Director of Nav Samaj Ltd. was also in-charge of the Advertisement Department. The first respondent admits that Shri gadre is a friend of his Sarode is one of the co-defendants in a suit brought by the respondent No. 2 for defamation, claiming damages of Rs. One Crore, against Nav Samaj Limited and bagre. According to Sarode, there was a reconciliation between Banwarilal Purohit and Nagpur Times, and Banwarilal Purohit visited the office of Nagpur Times on 1-6-1991 and the defamation suit was withdrawn. He could not say when that suit was withdrawn. Prabhakar Deshpande (P. W. 11) stated in his evidence that the suit, which was filed by Banwarilal Purohit, had not been withdrawn and his statement has not been challenged in cross-examination. It is apparent that when the election was being bitterly contested, or a litigation involving a large sum of money was pending between Banwarilal Purohit and Nav Samaj Limited, Sarode, who was a party to that litigation, had every motive to speak against the respondent No. 2. It is in this context that the evidence of Sarode and the witnesses who came from Nagpur Times, would fall to be considered.

191. Sarode started by saying that in Bill Nos. 471, 472, 474 and 476, the figure CC 48234 signified Computer Code Number, but then corrected himself and stated that those were bill numbers and the computer code numbers were different as have been mentioned on the upper portion of the receipts. Every bill is given a separate bill number, but these four bills were given the same number and, according to him, this was done by mistake. This is so also with regard to the bill Nos. 478, 480 and 482 which have been given the same bill number, i.e., CC 48235. He could not say when the mistake came to be realised and what the letters LC in the bill indicated. Nagpur Gramin Congress had a separate Code No. 478 and Nagpur Shahar District Congress had Code No. 260. Sarode was not able to say which one was opened earlier and whether Nagpur Shahar Congress Committee had an account with them before the election. He could not say whether the seven bills—Exhibits 471, 472, 474, 476, 478, 480 and 482—were originally debited to Account No. 0056 and how long that account continued.

192. The learned Advocate General urged that no significance can be attached to the mistake which was committed in giving the same bill number to several receipts, because though there may be some inconsistency with regard to the code numbers resulting in the code numbers having been erased later and corrected, the bills stood in the names of the persons or the concerns whose name also appeared in the receipts and since there was no change in the

names given in the bills and the receipts, the change in the code number was inconsequential. It is, however, overlooked that the advertisements appeared in the name of a well-wisher, which was an obvious attempt to conceal the identity of the person who was giving the advertisements. Apparently, Nitin Furniture, Punjab Wood Craft, Ranjit Engineering Works and Talmale Bandhu were commercial concerns who would have been only too happy to be projected in the advertisements issued in the newspapers, because it would have given them some publicity, if they were to spend such a large amount as Rs. 15,000/- on each pair of the advertisements, and the concealment of the names of these concerns issuing the advertisements at once becomes suspicious.

193. According to the first respondent, he was not aware of any of these advertisements and had nothing to do with the Advertisements issued in Nagpur Times and Patrika, and these advertisements were not given either by him or at his instance and he had not taken responsibility for the expenses incurred on these advertisements. It was only after the election petition was filed that he got enquiries made by his friend-Shri Agrawal Advocate, and he went round all the newspaper's offices and collected necessary information. The petition was filed in July 1991 and it would be obviously after that date that the enquiries must have been directed. There is nothing to suggest that similar mistakes had been committed by giving same bill numbers to the bills to be issued to different persons, and it is unusual that the bill numbers should have been given in respect of the bills issued on the same date. The submission of the learned Counsel for the petitioners was that since the bills were computerised, if it was intended to get bills with different names, the original bill number could not have been altered and the only device which could have been adopted, if one were to show that different persons had inserted these advertisements, would have been to have several persons named and have the bills issued in different names. The receipts came to be issued from the bound receipt-books on 14-9-1991. Sarode (P. W. 9) states that the mistake was realised in the four earlier receipts with regard to the code number on 8-8-1991 and the corrections were made in the earlier receipts on 8-8-1991, after the mistake came to their notice. The seven bills—Exhibits 471, 472, 474, 476, 478, 480, and 482 were originally debited to Account No. 0056. In para-35, he states that all the amounts which had been received from Nagpur Shahar District Congress and Nagpur Gramin Committee were initially credited in Account No. 0056 which stood in the name of Datta Meghe Election Advertising Account, and in the receipt dated 8-8-1991 (Exhibit 487) issued to Nagpur Zilla Congress Committee, Code No. LC 260 was mentioned. It is not, therefore, possible to agree with the submission of the learned Advocate General that there was an inadvertent mistake in giving that same bill numbers to several receipts on 30-6-1991 and that the code numbers in the receipts issued on 14-9-1991 were corrected only in order that the code numbers allotted to Nitin Furniture, Punjab Wood Craft, Ranjit Engineering Works and Talmale Bandhu should be correctly stated on

the receipts. There is no indication as to when the code numbers came to be allotted to these four concerns and whether they were there at the time when the advertisements were published.

194. Mahendra Bangare (P. W. 40), Finance Manager of Nagpur Times, stated that the recovery register was maintained by his department under his supervision, and it was a computerised statement. While all the other entries appeared in typed-script, on page No. 6, in the month of September, 1991, the entry regarding Punjab Wood Craft resting upon bill No. 48204 appears in ink, and that is so also with entry No. 2005—M/s Tamale Bandhu. He admitted that the entry regarding Ranjit Engineering Works appeared at serial No. 2004 and that of Punjab Wood Craft, which is at serial No. 2003, comes after Ranjit Engineering Works, and the entry regarding Tamale Bandhu, i.e. entry No. 2005, appears on the next page in manuscript. The entry Nos. 2000 and 2007 relate to Nagpur Shahar Zilla Congress and the colour of the pages of the recovery register is different, but he explained that the difference in the colour was due to the paper being not part of the same continuation sheet, and the colour would depend on the stock from which the paper is drawn.

195. Considering the evidence of Sarode (P.W.9) and Bangare (P.W. 40), it is clear that the circumstance that several receipts came to bear the same receipt numbers, could not be an inadvertant, mistake. The names mentioned in the bills and the receipts do not appear to be of the persons who actually gave the advertisements, because the advertisements only showed the advertiser as a well-wisher, when apparently there was no reason why the real persons, who gave the advertisements, should have hesitated from their names being published, when there was no objection to the bills and the receipts being issued in the names of those persons. This is a clear instance where the names in the bills and the receipts were manipulated, after the present election petition came to be filed.

196. The question, however, is whatever may be the reasons for the manipulation, can the liability for manipulation be fastened on the first respondent. Merely because there was a change in the names in the bills and there was every good reason for the name of the first respondent, if it had appeared in the original document being suppressed and there was a Datta Meghe Advertising Account 0056 in the book of Nav Samaj Ltd., it cannot be said that the first respondent's name had appeared in the original bill and that, that was removed and new names were substituted. The matter cannot rest merely on surmises. The persons, who had actually accepted the advertisements, were not examined. Though Sarode's version, when it comes to be against the interest of the respondent No. 2, would have to be considered with more care and caution, for disbelieving the version that the first respondent was not concerned with the advertisements some positive evidence was necessary. On the other hand, the positive evidence is that the first respondent had not given these advertisements and had not accepted the re-

sponsibility for these advertisements. None from Tamale Bandhu, Funjab Wood Craft, Ranjit Engineering Works and Nitin Furniture was called as a witness, to show that they had not given the advertisements. If such evidence were led, then an inference could have legitimately been raised that since they had not given these advertisements, they must have been given by the first respondent, because he would be the person who would be really interested in advancing his own cause. Since, in the elections, several persons, on their own, may come forward for giving the advertisements, without any apparent motive, in the circumstances, though there is no reason to doubt the evidence that the names in the bills and the receipts issued by Nav Samaj Ltd. had been changed in order to conceal the real advertiser, I find that that evidence by itself is not sufficient to clothe the first respondent with the responsibility of giving the advertisements. It cannot be said that this expense could have been entered in the account of his election expenses filed before the District Election Officer and that non-mention of this amount was calculated to suppress the expenditure, on this count.

197. As regards two more advertisement published in Nagpur Times (Ex. 84/6) and Nagpur Patrika (Ex. 85/7), both dated 16-5-1991, Santosh Sarode (P. W. 9) states that they were the subject of the common bill Exhibit 456, dated 22-5-1991, which was issued in the name of Sharad Pawar Mitra Mandal, and the amount Rs. 12,000/- was received under the receipt Exhibit 457, dated 14-9-1991, from Sharad Pawar Mitra Mandal. There is no evidence to show that the amount, which has been paid in the name of Sharad Pawar Mitra Mandal in this case, was paid by any one on behalf of the first respondent, or that the first respondent had taken the responsibility for the payment of this amount. In these circumstances, no liability in respect of these advertisements can be fastened on the first respondent.

198. From the above discussion, it would be clear that the only amount, which has been said to have been incurred by the first respondent on the advertisements and which he had not disclosed in the return of expenditure filed before the District Election Officer, was the amount of Rs. 1,320.00, in respect of the advertisement dated 28-4-1991 in Tarun Bharat (Item D-1 of Annexure-D of Annexure-15 to the petition); Rs. 7000/- in the special issue of Tarun Bharat dated 21-5-1991 (Item 8 of Annexure 18-D to the petition); Rs. 22,900.00, in respect of advertisements in newspapers shown at item Nos. A11(a) & (b); A 12 (a) & (b); A 14 (b); A 15 (a) & (b); A 17 (a) & (b); A 19 (a) & (b) and A 22 (a) & (b) in Annexure-A to Annexure-15 of the petition. The responsibility for all the other items which have been mentioned in issue No. 5 (vi) & (vii) cannot be placed on the first respondent.

The total of the amount which should have been included in the return of expenditure by the first respondent in respect of the above items, which has not been shown therein, would be Rs. 22,900.00, and this amount shall have to be added therein. Issue Nos. 5(a) and 5(b)

(vi)&(vii) are answered accordingly. Issue No. 6(a) is answered in the negative.

199. With regard to issue No. 6(b), the learned Counsel for the petitioners stated that he would not be in a position to urge that the expenditure on the advertisements introduced by Orange City Advertising should be included in the expenditure incurred by the first respondent. I have already found that no other item of expenditure incurred through Prasad Publicity, except what has been included in Issue No 10 is therefore, answered in the negative issue No. 5(b) (vi) and (vii), can be included, and

200. Issue Nos. 10 to 13:—The expenditure, which has been proved to have been incurred by the first respondent is thus :

Rs. 17,900.00 for the amount paid to Raj Automobiles;

Rs. 1,320.00 for the advertisement in the Tarun Bharat dated 28-4-1991.

Rs. 7,000.00 for the advertisement in Tarun Bharat---Election Special.

Rs. 9,160.00 for the advertisement in Lokmat Dt. 12-5-1991 (Sharad Pawar Mitra Mandal);

Rs. 22,900.00 in view of the findings recorded on issue No. 5(b)(vi)& (vii).

Rs. 58,220.00 Total

The total amount of expenditure suppressed, thus, works out to Rs. 58,220.00. The total amount of Expenditure, which has been shown to have been incurred by the first respondent in his State of Expenditure, under sections 77 and 78 of the Act, was Rs. 72,421.85. In view of my findings, the return should have been for Rs. 1,30,641.85. This amount falls short of the permitted expenditure of Rs. 1,50,000.00 under rule 96 of the Conduct of Election Rules, 1961 and I, therefore, find that first respondent has not committed a corrupt practice within the meaning of section 123(6) of the Act, under section 123(1)(A) and 123(2) of the Act, Issue No. 10 is therefore, answered in the negative Issue Nos. 11 and 12 would not survive in view of these findings. In view of this position, there is no question of the respondent No. 2 being declared as duly elected to the 10th Lok Sabha from 23. Nagpur Parliamentary Constituency. Issue No. 13 is, therefore, answered in the negative.

201. With regard to the costs, the Counsel for the respondent No. 1, respondent No. 18 and respondent No. 40 filed their statements of fees received by them. However, considering that as large an expenditure as Rs. 58,220/- had been suppressed by the first respondent, I think this is a fit case where the party should be directed to bear their own costs.

202. In the result, the election petition fails and is dismissed. There will be no order as to the costs.

By the Court,
Sd. D. R. Hadge
Assistant Registrar, High Court of Bombay at Nagpur

